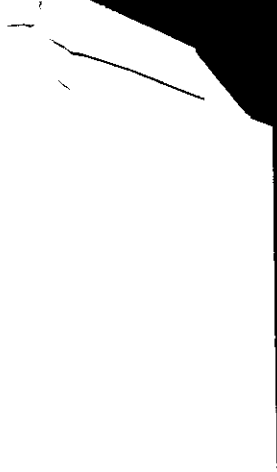


LAW AND THE NOAHIDES




LAW *and the* NOAHIDES

LAW AS A UNIVERSAL VALUE

By

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Preface

Seven commandments were given to the children of Noah. The term “children of Noah,” of course, refers to all mankind. The great flood reported by the Bible destroyed the entire world; Noah and his children were the only survivors. Thus, all men and women are descended from Noah and are known to Jewish tradition as “the children of Noah” or Noahides. One of the seven commandments given to the children of Noah is the commandment to establish a legal system (*dinim*). The present study attempts to elucidate the Noahide obligation to establish a legal system.

The establishment of legally binding norms, however, is not sufficient to fulfill the Noahide commandment to establish a legal system. The present study quotes Rabbi Moshe Isserles (1525-1572), who wrote that Noahides are obliged to judge justly between citizens and strangers. Thus, the commandment to establish a legal system requires the establishment of a *just* legal system, one that is applied with fairness and before whom all are equal.

Today, this principle is universally recognized and known as the “rule of law.” Law that violates fundamental human values does not satisfy modern conceptions of the

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rule of law and certainly does not meet the Noahide obligation to create a just legal system. Those who follow the dictates of an unjust legal system are held accountable for *obeying* the law and not resisting it. It was on this basis that war criminals were tried and convicted at the international tribunal in Nuremberg after World War II.

In recent years we are witnessing renewed interest in the Noahide commandments. Various groups that bear the name Noahides wish to learn of their Noahide obligations.

The Noahide obligation to establish a just legal system constitutes a point of commonality between the Jewish People and other nations on the most fundamental level of social existence. In 1991, in recognition of the ninetieth year of Rabbi M. M. Schneerson (the Lubavitcher rebbe), the U.S. Congress issued a joint resolution reaffirming the commitment of the American people to the moral and ethical values contained in the seven Noahide commandments (see Appendix III). The resolution expressed concern for the deterioration of fundamental human values in our time.

The resolution concluded by declaring a day devoted to the study of the moral and ethical values embodied in the Noahide commandments.

The present study is the first in a series of studies now being prepared for publication in English. These studies are based on research originally published in Hebrew by the Israeli Ministry of Justice as part of its Studies and Surveys on Jewish Law. It is hoped that the present study will help satisfy the desire for knowledge of all those concerned with the universal values essential to human society.

Nahum Rakover
Jerusalem 5758 – 1998

Chapter One

INTRODUCTION

The establishment of a judicial system is recognized by Jewish law as a fundamental obligation whose incumbency upon all mankind predates the revelation of biblical legislation to the Jewish people.

The obligation to maintain a judicial system is known in talmudic literature as the requirement of *dinim* (literally, laws). It is one of the commandments given to Noah and his descendants (or perhaps even to Adam),¹ and known as “the commandments of the children of Noah.”² The com-

¹ Thus in *Genesis Rabbah* 16:6. For parallels, see J. Theodore and Ch. Albeck, *Midrash Bereshit Rabba* (Jerusalem, 1965), ad loc.; see also *Torah Shelemah*, Gen. 2:16, vol. II, pp. 229, section 230. *She'iltot of Rav Ahai*, *She'ilta* no. 2 (cited below, text to note 218), discussing the importance of law, mentions that Adam was commanded concerning *dinim*. Thus also, Maimonides, *M.T.*, *Melakhim* 9:1: “Adam received six commandments....” See below. See also Maharatz Hayyot, *Torat haNevi'im* 10, “*Mitzvot Benei Noah*,” in *Kol Sifrei Maharatz Hayyot*, vol. I, comment p. 61.

² The Hebrew term *benei Noah*, literally sons or children of Noah, is

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mandments which are binding upon all mankind are called the commandments of the children of Noah, and not of the sons of Adam, as R. Ya'akov Anatoli³ explains:⁴ "Since God destroyed all humanity and preserved only Noah, mankind in general became known as the children of Noah. The one exception is the Jewish people, whose members are known as the children of Israel."⁵ Furthermore:⁶

Through Noah, God made a covenant with the human race and with the earth, that no destruction would come upon them any more. Thus, all men are under Noah's protection through God's covenant with Him.

The *Tosefta* delineates the Noahide obligations in the following fashion:⁷

To the descendants of Noah, were addressed seven commandments:⁸ the requirement of *dinim*,⁹ the prohibitions

commonly translated as Noahides, Noahites, or Noachides. The term Noahide is used also as an adjective as in "the seven Noahide commandments." Here, "children of Noah," "descendants of Noah," and "Noahides" are used interchangeably. One descendant of Noah would, of course, be a "Noahide."

³ R. Ya'akov son of R. Abba Mari Anatoli (born ca. 1200), physician, translator, and preacher, was a son-in-law of R. Shemu'el ibn Tibon.

⁴ *Mamad haTalmidim* (Lyck, 1866), p. 12a.

⁵ See Rashi, *Nedarim* 31a, s.v. *She'eini neheneh livnei Noah*: "The entire world is descended from the children of Noah." See also, A. Kirschenbaum, "haBerit Im Benei Noah Mul haBerit beSinai," *Dinei Yisrael*, VI (1975), 31-48.

⁶ Hermann Kohen, *Religion of Reason*, trans. Simon Kaplan (New York, 1972), p. 327.

⁷ *Tosefta Avodah Zarah* 9:4; for a variant, see *Sanhedrin* 56a-b.

⁸ Concerning the prohibition of coveting another's property, *Sefer haHinnukh* 416 (ed. Chavel, Commandment 424), observes "All men are included in this prohibition, for it is a corollary of the prohibition of theft, which is one of the seven commandments that all mankind was commanded. And make no mistake, my son, concerning the seven

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of idolatry, blasphemy, sexual offenses, bloodshed, and theft. What is meant by *dinim*? In the same way that the Jewish people are commanded to establish courts, so too are the descendants of Noah commanded to establish courts.

According to the passage from the *Tosefta*, the commandment of *dinim* requires the appointment of permanent judges who will be available to sit in judgment whenever the need arises. This, apparently, is the opinion of Maimonides.

Noahide commandments, whose number is well known and appears in the Talmud, for they are in truth broad categories, each containing many particulars....” See also *Hullin* 92a: “These are the thirty commandments that the descendants of Noah accepted upon themselves.” A listing of these thirty appears in R. Aaron Greenbaum, ed., *Commentary of Rav Shemu’el ben Hofni Gaon* (Jerusalem, 1979), Genesis 34:12. Concerning the absence of the commandment of *dinim* in R. Shemu’el son of Hofni Gaon’s list, see the editor’s preface, p. 67ff. R. Aharon Lichtenstein, in the appendix to his *The Seven Laws of Noah* (N.Y., 1986), p. 117, suggests that commandment number 18, missing from the original manuscript, is the commandment of *dinim*. R. Menahem Azariah of Fano (1548-1620), an Italian rabbi and mystic, explains that the thirty commandments are details of the seven, and lists all thirty (*Asarah Ma’amarot, Ma’amar Hakor Din*, III:21; see Rav A. Greenbaum, op. cit., p. 69). For a different approach, see *TJ Avodah Zarah* 2:1 (ed. Vilna, p. 9a): “These are the thirty commandments that the descendants of Noah will accept upon themselves in the future.” See also R. Reuven Margaliyot, *Tal Tehiyah, Mishpetei Ger Toshav*, p. 67.

⁹ Instead of *dinim* (laws), *Hasdei David*, a commentary on the *Tosefta* in question, reads here *dayyanim* (judges) and notes that this reading supports Maimonides’ definition of the commandment as the appointment of judges. See chapter 7 below. See also R. Me’ir Lerner (head of the rabbinic court of Altona), *Resp. Hadar haCarmel, Hoshen Mishpat* 2, and D. Frimer (cited below, note 66) p. 99, nt. 55. In any case, the *Tosefta*’s own explanation of *dinim* as the appointment of judges supports Maimonides’ approach.

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ides as well:¹⁰ “What is meant by their commandment of *dinim*? That they [Noahides] are obliged to appoint judges in every district to adjudicate matters concerned with the other six [Noahide] commandments and caution the people.”¹¹

Five of the Noahide commandments, it has been said, could have been discovered by rational inquiry. So the *Sifra* writes:¹²

“You must keep My laws” (Lev. 18:4) – these are the matters written in the Torah which, had they *not* been specified, logic would in any event have dictated, namely, theft, sexual offenses, idolatry, blasphemy, and bloodshed.

Highly instructive are the comments of R. Nissim Gaon¹³ in his introduction to the *Talmud*.¹⁴ After showing that God addresses His commands only to those with the mental capacity to relate to them, R. Nissim asks:

¹⁰ *M.T., Melakhim* 9:14.

¹¹ Further on, Maimonides explains that the residents of Shekhem (see Gen. 34) were deserving of death since “they had witnessed [the incident] and did not sentence him.” Are the descendants of Noah to be punished only for failure to try an offender, or also for failure to appoint judges regardless of whether the people try an offender? *Hemdat Yisrael, Kuntres Ner Mitzvah*, p. 89b, expresses uncertainty. See also text to note 238 below.

¹² *Sifra, Aharei* 9:10. See also *Midrash Lekah Tov*, Gen. 2:15, “For all of these are rational commandments, that even if biblical legislation had not been given to the Jewish People, the generations [of man] would have kept on their own.” See also *Yoma* 67b.

¹³ R. Nissim Gaon (d. 1050 CE) of Kairouan was one of the most distinguished Jewish scholars of North Africa.

¹⁴ Printed in the Vilna edition of the *Babylonian Talmud* at the beginning of the tractate *Berakhot*.

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Since anyone who is mentally fit is obliged to keep the commandments, why did God single out Israel to receive the Torah..., are not all men equal in their obligation to keep the commandments?

To which he responds:

All men are indeed obliged by all those commandments of the Torah which are discoverable by logic. Since the creation of the first man, all men have been bound by such commandments, and so they will remain for all generations.¹⁵

¹⁵ He goes on to assert that God also requires the observance of commandments which do not have their basis in reason but rather in divine decree (*mitzvot shimiyyot*). Among the seven Noahide commandments, there are those that are rooted in reason and those that are the result of divine decree only: "God did not exempt the ancients from the commandments known by tradition [and not reason] from the words of the prophets, which, in His wisdom, were suitable. A number of commandments were imposed upon Adam, as our Sages said: 'Seven commandments were addressed to the sons of Noah....' And as time went on, more commandments were added until they reached a total of 28 – some say a total of thirty – commandments before Revelation. And although the commandments inferred from Genesis 2:16-17 ('And the Lord God commanded the man...') are not all non-rational commandments, for the obligations to know God, to obey and to serve Him are based upon reason, and bloodshed and theft are prohibited as a matter of reason, and the commandments not based on reason that were commanded subsequently were included only with similar commandments not based on reason" (R. Nissim Gaon's last comments are not altogether clear). See Rashi's comments on Lev. 18:4. See also Nahmanides' *Torat Hashem Temimah, Kitvei haRamban*, vol. I, p. 173: "These are rational commandments that every creature who recognizes his Creator must observe, as is written concerning Abraham (Genesis 18:19), 'that they may keep the way of the Lord, to do righteousness and justice....'" See also, A.J. Heschel, "Perakim leInyan Torah miSinai," *Hagut Ivrit beAmerica*, 1 (1972), 308-317, see p. 316.

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SOURCES OF THE NOAHIDE LAWS

The Sages found support¹⁶ for the commandment of *dinim* in the commandment addressed to Adam, “And the Lord God commanded the man, saying: ‘Of every tree of the garden you may freely eat; but of the tree of the knowledge of good and evil, you shall not eat...’” (Gen. 2:16-17), and in God’s observation regarding Abraham: “For I have known him for the sake that he may command his children and his household after him, that they may keep the way of the Lord, to do righteousness and justice....” (Gen. 18:19):

From where is this [requirement of *dinim*] inferred? R. Yohanan said, “For it is written, ‘And the Lord God commanded the man, saying: Of every tree of the garden you may freely eat....’”

“‘And the Lord God *commanded*,’ this refers to *dinim*.

“And it is likewise written, ‘For I have known him

¹⁶ Though not firm textual grounding.

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for the sake that he may command his children and his household after him [to do righteousness and justice].’”¹⁷

In this same vein, it has been observed that the first commandment in human history requiring man to abstain from some act, the command to abstain from eating of the tree of knowledge, is the source of “moral law for all of humanity.”¹⁸

It appears that Genesis 2:18 is not the textual *source* of the commandment of *dinim* but rather a kind of textual *support* (*asmakhta*). In his *Kuzari*, Yehudah Halevi explains:¹⁹

They utilized verses in the manner known as *asmakhta*, in which the verse *signifies* something already known by oral tradition. So, for instance, the verse, “And the Lord God commanded the man, saying: Of every tree of the garden you may freely eat...,” it was explained, *suggests* the seven Noahide commandments. In the comment, “‘And the Lord God commanded...,’ this refers to *dinim*,” how distant the conclusion is from the text with which it has been associated! Hence, one must conclude that the Sages had an *oral tradition* regarding the seven Noahide commandments and associated it with this verse in order to facilitate recall.

Maimonides, as well, emphasized that these commandments are known to us by “a tradition that traces back to Moses”;²⁰

Adam received six commandments: the prohibitions of idolatry, blasphemy, bloodshed, sexual offenses, and

¹⁷ *Sanhedrin* 56b.

¹⁸ See commentary of Samson Raphael Hirsch, Gen. 2:16.

¹⁹ *Kuzari* 3:73. For an alternate rendering, see the translation of Hartwig Hirschfeld, Judah Halevi. *The Kuzari* (New York, 1964), pp. 193-194. See also *Kesef Mishneh*, *Hilkhos Melakhim* 9:1.

²⁰ *M.T.*, *Melakhim* 9:1.

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theft and the requirement of *dinim*. Although these commandments are known to us by a tradition that traces back to Moses, as well as being a matter of reason, from the general thrust of the Torah it may be inferred that these are what was commanded. Noah received the additional prohibition against eating the flesh of a living animal [*ever min hahai*], making a total of seven.

Maimonides, it will be noted, adds two additional sources for the Noahide commandments: 1) reason; 2) "the general thrust of the Torah."²¹

Regarding this, R. Me'ir Dan Plotzki,²² an authority of the last generation, remarked,²³ "This is an extremely difficult passage, and although I have studied it long and hard, I cannot say that I understand Maimonides' intent."

Having posited a tradition that traces back to Moses, reason, and the general thrust of the Torah, as the sources of Noahide commandments, Maimonides rules that one who observes the seven commandments "[purely] by virtue of reason" may not be considered a resident alien (*ger toshav*) in the Holy Land. "Nor is he considered to be of the righteous non-Jews, but rather of their wise men."²⁴

²¹ See Maharatz Hayyot, *Torat haNevi'im*, op. cit. (note 1 above), p. 63.

²² R. Me'ir Dan Plotzki (1866-1928) served in the rabbinate of Warta and Ostrow, Poland.

²³ *Hemdat Yisrael*, op. cit. (note 11 above), p. 86a. See also *Torah Shelemah, Millu'im* to vol. XVII, p. 119, nt. 1.

²⁴ *M.T., Melakhim* 8:11. The reading, "of their wise men," (*ela mihakhmeihem*) is to be found only in manuscripts and not in printed editions of *M.T.* The same reading may be found in the introduction to *Ma'aseh haEfod* (published in 1403), by R. Yitzhak son of Moshe, also known as Profiat Duran haLevi of Catalonia, and in *Kevod Elohim* (Ferrara, 1556), by Yosef son of R. Shem Tov, ad fin. See also *Maharatz Hayyot*, op. cit. (note 1 above), chp. 11, note on p. 66; *ibid.*, vol. II, p. 1035; and *Iggerot haRe'ayah*, I:89, p. 100. Regarding the

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On the other hand:²⁵

One who has accepted the commandments because [he believes] they were commanded by God in the Torah²⁶ and that through Moses He informed us of what the descendants of Noah had previously been commanded,²⁷

proper reading of this passage of Maimonides, see also Steven S. Schwarzschild, "Do Noahites Have to Believe in Revelation," *JQR*, LII (1961-1962), pp. 297, 301-303; M. Fox, cited note 82 below; and the appendix to Jacob I. Dienstag, "Natural Law in Maimonidean Thought and Scholarship," *JLA*, VI (1978), 75-77. *Resp. Oneg Yom Tov, Orach Hayyim* 19, distinguishes between negative commandments, the observance of which is passive, and positive commandments, the observance of which is active. In the first case, refraining from some act is not considered observance of the commandment unless the individual intends his inaction as observance. In the second, however, the action is considered observance even when there is no intention. Accordingly, since the Noahide commandments do not entail positive action, Maimonides ruled that observance by virtue of intellectual conviction, i.e., without the intention of observing a *commandment*, does not qualify one as "of the righteous gentiles."

²⁵ *M.T.*, *Melakhim* 8:11. Concerning this passage, see text to note 78 below. Cf. *Resp. Rambam* (ed. Blau) 148: "His observance must be accompanied by recognition of the prophecy of Moscs, who was so commanded by the transcendent God, and he must believe in this. He should not observe for any other [reason] or on the basis of his own conclusion, as is explained in the *baraita* of R. Eliezer ben Ya'akov, and as we have explained at the end of our great work [i.e., *M.T.*]."

²⁶ Cf. Maimonides, *M.T.*, *Sefer Torah* 10:11: "One who sits before a Torah scroll must conduct himself with respect, fear, and awe; for the Torah is *the faithful witness to all mankind*, as is written (Deut. 31:26) '...that it be a witness to you.'" R. Menahem Azariah of Fano, *Asarah Ma'amarot*, op. cit. (note 8 above), includes as a corollary of the fourth Noahide commandment – the prohibition of blasphemy – honoring the Torah. The commentary *Yad Yehudah* on *Asarah Ma'amarot*, ad loc., takes Maimonides' comments on observance "because they were commanded by God in the Torah," to be based on this.

²⁷ See *Or Same'ah*, *Hilkhot Melakhim*, chp. 10; and *Torah Shelemah*,

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is considered to be of the righteous non-Jews, and has a portion in the world to come.

In a similar vein, *Mishnat R. Eliezer* explains:²⁸

The difference between the righteous of Israel and the righteous of the non-Jews is that the righteous of Israel are not considered righteous unless they observe all the commandments of the Torah, whereas non-Jews, once they observe the seven commandments given to the descendants of Noah, in all their detail, are considered righteous by virtue thereof. Under what circumstances is this true? When they observe the commandments and say, "[We observe] because our father Noah has commanded us that which God commanded him." If they do this, they earn a place in the world to come, like Jews, even though they have not kept the Sabbath or the festivals, for they were not commanded concerning these. If, however, they keep the seven commandments and say, "We have heard this from such and such an individual," or they come to them by virtue of their own reasoning..., even if they have observed the entire Torah, they receive their reward in this world only.

While this may, in fact, be the source for Maimonides' ruling, the difference between the words of *Mishnat R. Eliezer*, "[We observe] because our father Noah has commanded us that which God commanded him," and those of Maimonides, "because [he believes] that they were commanded by God in the Torah, and that through Moses He

Millu'im to vol. XVII, p. 220.

²⁸ *Mishnat R. Eliezer* (ed. Enelow, New York, 1933), *Parashah* 6, p. 121. See also the remarks of Jacob Dienstag, *op. cit.* (note 24 above), on the connection between the above passage of Maimonides and *Mishnat R. Eliezer*.

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informed us of what the descendants of Noah had previously been commanded..." requires further study.

The verse regarding Abraham, "For I have known him for the sake that he may command his children and his household after him, that they may keep the way of the Lord, to do righteousness and justice..." was interpreted by the Sages as applying not only to members of the Jewish people, of whom Abraham was progenitor, but also to all mankind. This is apparent from a question asked by Rav Hamnuna:²⁹ "Could it be that women, descendants of Noah, are excluded from the commandment of *dinim*? Surely it is written 'For I have known him... and his household....'?! Rav Hamnuna's use of this verse to clarify a point regarding *dinim* shows the general presumption that although it refers to Abraham and his descendants, the principle established applies to all mankind.

R. Hamnuna's rhetorical inclusion of women in the commandment of *dinim* is based upon the known talmudic equation of "household" (*beito*) with wife. He answers his own question, however, by noting: "'his children' (appearing here in the generic masculine which may be read literally as *sons*) has reference to justice (i.e., *dinim*), whilst 'his household' (i.e., his wife, hence women) has reference to righteousness." In other words, his sons are obliged to do justice (*dinim*), his wife to do righteousness. Accordingly, women are indeed excluded from *dinim*. This supports Maimonides' opinion that the commandment is to establish courts and appoint judges, for if *dinim* were taken (as some do) as an obligation to obey civil and criminal law, it is inconceivable that women would be excluded.³⁰

²⁹ *Sanhedrin* 57b.

³⁰ See *Resp. Yehudah Ya'aleh*, II:1, s.v. *Ibraff.*; *Torah Temimah*, Gen.

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The Noahide obligation of *dinim* presumes a certain commonality between Israel and the other nations: both are commanded to appoint judges.³¹ If so, it may be asked what the meaning is of the passage in Psalms (147:19-20), “He declares His word to Jacob, His statutes and His ordinances unto Israel. He has not dealt so with any nation; and as for His ordinances, they have not known them.” The passage clearly implies some difference between Israel and the nations with regard to law. *Midrash Tanhuma*³² explains:

“His word,” refers to the words of Torah; “His ordinances,” refers to his laws [*dinim*]. God gave the Torah and its laws to Israel only. How is it known that when a Jew and a non-Jew have a dispute, the Jew may not say to the non-Jew, “Let us resort to your court”? It is written, “He has not dealt so with any nation; and as for His ordinances, they have not known them.” Since the nations do have the requirement of *dinim* as one of the seven Noahide commandments, what is the meaning of “and as for His ordinances, they have not known them”? This refers to the details of judicial procedure [which were given only to Israel].³³

18:19, n. 42; and R. Me’ir Dan Plotzki, *Hemdut Yisrael, Kuntres Ner Mitzvah*, p. 99a.

³¹ Cf. R. Yosef Albo, *Sefer haIkarim* 1:25, “You will find that although the law of Moses and Noahide law differ somewhat in their details, their general principles are the same, coming, as they do, from the same source. Moreover, the two exist concurrently: whilst the Jewish People possessed the Mosaic law, the other nations possessed the Noahide law.... There is no doubt that the other nations could achieve human success through Noahide law, since it [too] is divine, though not the same degree of success as the Jewish People, whose existence is based upon the Mosaic law. Our Rabbis have said, ‘the righteous of the nations have a place in the world to come.’”

³² *Midrash Tanhuma, Shofetim* 1.

³³ Cf. *Midrash Yelamdenu*, Ex. 21:1, which is slightly variant: “Were not

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R. Nissim son of Re'uven Gerondi (Ran),³⁴ commenting upon the verse (Deut. 16:18), "Judges and officers shall you make in all your gates...; and they shall judge the people with righteous judgment," explains that Israel, in contrast to the other nations, is commanded to render³⁵ "a truly just judgment," for even if such judgment were in itself not required for the functioning of society and filled no immediate need, by virtue of such just judgment "Divine grace" will be visited upon our people. Thus he explains the difference between Israel and the nations:

And our Torah is differentiated from the practices of the nations in that for them, the only value of just adjudication is the proper functioning of society.³⁶

Nevertheless, continues Ran, the Jewish people and the nations do share something in common – the utilitarian need for a judicial system for the continued existence of society.

Mankind needs judges, otherwise men will swallow each other alive and society will be destroyed. Every nation needs some such arrangement.... As a wise man

the descendants of Noah commanded concerning *dinim*? They do not have the details, exemplified in the instance in which ben Zakai questioned witnesses on the stems of figs [to identify the scene of a crime]." And in *Midrash haGadol* (ed. R. Solomon Fisch), Deuteronomy, p. 368: "These are the requirements of investigation and enquiry which were given to the Jewish People only." See also, *Yalkut Tehilim* 888.

³⁴ R. Nissim son of Re'uven Gerondi (d. Barcelona, ca. 1380) was a fourteenth century Spanish rabbinical authority.

³⁵ *Derashot haRan*, *Derush* 11.

³⁶ See Appendix II below, with regard to the commandment "...you shall not be afraid of the face of any man, for judgment is the Lord's" (Deut. 1:17) and the fact that Noahides are commanded *dinim* for the sake of public order, whereas for Jews, judgment is the Lord's.

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once noted,³⁷ even among thieves there exists a social contract. In this, Israel does not differ from other nations.³⁸

It was to meet the need of maintaining society that Jewish law also granted judicial powers to the king. Thus, when the maintenance of strict standards of judicial procedure endangers society, such as

when bloodshed becomes rampant and there is no fear of punishment [because the strictness of judicial procedure renders the courts powerless]..., God commanded, for the good of society, the appointment of a king [who is permitted to judge according to more flexible criteria].... Accordingly, the appointment of a king is common to Israel and the nations, both of which require public order, whereas, in the appointment of judges, Israel's requirement has an additional dimension, as is written (Deut. 16:18), "and they shall judge the people with righteous judgment." There is a requirement [independent of societal needs] that the appointed judges render judgments that are just and true.

Rav Kook³⁹ attempts to show that the Noahide commandments are fundamentally different from Jewish law, that the former are essentially a consequence of nature:⁴⁰ "Everything [that the descendants of Noah were commanded] is a matter of common knowledge; the Torah did not require them to study the fine details of the law, 'He declares His

³⁷ See Nahum Rakover, *Shilton haHok*, Section 5, "Ed Medinah," p. 151, nt. 70.

³⁸ Concerning the parallel between the law of the king and Noahide *dinim*, see text to note 112 below.

³⁹ R. Avraham Yitzhak haKohen Kook (1865-1935) was the first chief rabbi of Palestine.

⁴⁰ *Etz Hadar* 38 (ed. R. Yehudah Zoldan) p. 184.

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word to Jacob, His statutes and His ordinances unto Israel. He has not dealt so with any nation; and as for His ordinances, they have not known them.’” Elsewhere,⁴¹ Rav Kook is quoted as asserting:

“He has not dealt so with any nation; and as for His ordinances, they have not known them,” the generalities of the law may be found among the nations, but the details of law were given only to Israel. “All the rivers run into the sea.... Unto the place whither the rivers go, there they go again” (Ecclesiastes 1:7). The sea symbolizes an all-encompassing reality from which all else emerges, the source from which all aspects of Torah branch out and to which all return to draw upon their original source. To Israel was revealed not only the sea, but also all the rivulets that flow into it and flow out again.⁴²

According to one view, Israel was commanded regarding *dinim* prior to the revelation at Sinai. The verse, “There He made for them a statute and an ordinance, and there He tested them” (Exodus 15:25), is cited in a *baraita* as evidence that Israel was commanded concerning *dinim* already at Mara (one of the stops on the way to Sinai):⁴³ “Israel received ten commandments at Mara: the seven that the descendants of Noah had received and, in addition to these, *dinim*, the Sabbath, and the honor of⁴⁴ parents.”⁴⁵

⁴¹ *Tehumin*, VII (1986), 275. Cf. Rav Kook’s remarks in *Arpilei Tohar* (Jerusalem, 1983), p. 93.

⁴² See also R. Yitzhak Breuer, *Sefer Nahli’el* (Jerusalem, 1982), pp. 313-314.

⁴³ *Sanhedrin* 56b. See also *Torah Shelemah*, Ex. 21:1 and *Millu’im* to vol. XVII, p. 17; See also *Encyclopedia Talmudit*, s.v. *Dinim*, vol. VII, p. 396.

⁴⁴ See Rashi, Ex. 15:25: “At Mara, He gave them a few passages of the

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Why did Israel need to be commanded the seven Noahide laws, by which, as human beings, they were already bound? Rashbash⁴⁶ asserts⁴⁷ that it was in order to obligate the rest of mankind. If the seven laws had not been expressly repeated to Israel, only Israel would have been bound by them in accordance with the principle articulated in the *Talmud*: "Every commandment given to the descendants of Noah and not repeated at Sinai was meant for Israel only and not for the descendants of Noah. Those repeated at Sinai, however, were addressed to Israel and the rest of mankind" (*Sanhedrin* 59a). Thus, concludes Rashbash,

had Israel not been commanded regarding these seven laws, the rest of mankind would have been exempt from them, and only Israel would have been obliged to ob-

Pentateuch, that they might begin to study them, namely, the Sabbath, the red heifer, and *dinim*." See also H. Milikovsky, "Parah Adumah Lifnei Sinai – Masoret Kedumah O Ta'ut Soferim?" in *Iyyunim beSifrut Hazal, beMikra, uveToledot Yisrael, Likhvod E.Z. Melamed* (Jerusalem, 1982), p. 268.

⁴⁵ Concerning this *baraita*, the *Talmud*, *Sanhedrin* 56b, raises the obvious question that the descendants of Noah were also commanded regarding *dinim*, and answers that this particular *baraita*, according to which it appears as though the descendants of Noah were not given the commandment of *dinim*, was formulated in accordance with the opinion of R. Menasheh. R. Menasheh accepts a different reckoning of the Noahide commandments, replacing *dinim* and blasphemy with the prohibitions of mixed species and castration.

⁴⁶ R. Shelomoh son of R. Shimon Duran (1400-ca.1467) served as rabbi of Algiers after the death of his father.

⁴⁷ *Resp. Rashbash* 543. Maharatz Hayyot, "Kuntres Aharon," *Kol Sifrei Maharatz Hayyot*, vol. II, p. 1035, asserts that the approach of Rashbash explains the obligation of the descendants of Noah to believe in the prophecy of Moses.

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serve them. The commandments having been repeated to Israel, however, all men are obligated....⁴⁸

Why was the commandment of *dinim* given at Mara, prior to the revelation at Sinai? In answering this question, some have suggested that God simply *informed* the children of Israel there that he would eventually give them these particular commandments.⁴⁹ Others have claimed that the commandment of *dinim* here refers to general norms of behavior and not laws in the usual sense of the word. So Nahmanides⁵⁰ writes:⁵¹

The plain meaning is... that Moses established customs for them concerning how to regulate their lives and affairs until they might come to an inhabited land. For a custom may be called law or ordinance when it is well established.... And He taught them ordinances whereby they should live: to love one another, to follow the counsel of elders, to be discreet in their tents with respect to women and children, and to deal in a peaceful manner with the strangers that come into the camp to sell them various objects. He also imparted moral instruction, that they not become like bands of marauders in whose camps all abominable things are done without shame....

To buttress this point, it is instructive that the phrase, “and do that which is right in His eyes,” appears in close prox-

⁴⁸ But see Maimonides, *Commentary on the Mishnah*, *Hullin* 6:7, cited below, text to note 57.

⁴⁹ See Rashbam, Ex. 15:25.

⁵⁰ R. Moshe son of Nahman (1194-ca.1270) was one of the outstanding scholars of Spanish Jewry. He helped found the Jewish community of Jerusalem after settling in the Holy Land.

⁵¹ Nahmanides, Ex. 15:25: See also A. J. Heschel, op. cit. (note 15 above), p. 310ff.

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imity to the words a “statute and an ordinance” (Ex. 15:26). Nahmanides⁵² explains the juxtaposition by quoting the *Mekhilta*:

“And do that which is right in His eyes” – this refers to business transactions and teaches that one who conducts business honestly and whose behavior is pleasing to his fellow men, is considered to have kept the entire Torah.

In his *Guide to the Perplexed*, Maimonides explains that the fact that *dinim* was given prior to the Sinai revelation is an indication of the commandment’s importance.⁵³

And it is clear both from the biblical text and tradition that the first matter that we were commanded had nothing to do with the sacrificial cult, but rather... concerned the Sabbath and civil laws..., [the latter] to eradicate injustice.

One opinion even holds that chapters 21-24 of Exodus (*Parashat Mishpatim*) were given at Mara:⁵⁴ “R. Yehudah says ‘And these are the *ordinances*’ (Exodus 21-24) – at Mara, as is written, ‘There He made for them a statute and an *ordinance*....’”⁵⁵

The importance of a legal framework, as indicated by the proximity of the contents of Exodus 21-24 to the Decalogue, is noted by R. Ya’akov Anatoli in his, *Malmed haTalmidim*:⁵⁶

⁵² Nahmanides, Exodus 22:26.

⁵³ *Guide to the Perplexed* III:32.

⁵⁴ *Mekhilta*, *Nezikin*, 1.

⁵⁵ Cf. *Mishnat R. Eliezer* 16. See also *Torah Shelemah*, Ex. 21:1, nn. 6, 7; and *ibid.*, *Millu'im*, p. 217. See also A. J. Heschel, *op. cit.* (note 15 above), p. 311ff.

⁵⁶ *Malmed haTalmidim*, *Parashat Mishpatim*, p. 71b. On R. Ya’akov

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And God, in His mercy, when He chose His people Israel, conveyed to them secrets of reality and commandments that preserve the faith, such as the Ten Commandments. And He informed them of the statutes and ordinances necessary for the maintenance of society. Thus He placed the portion *Mishpatim* ["Ordinances" – Exodus 21-24] next to the Ten Commandments: to demonstrate that the wholeness of man is not a purely theoretical matter. On the contrary, wholeness cannot be attained until men are possessed of regulations to govern social interaction.

Are members of the Jewish people bound by the Noahide laws as commandments given to all mankind, or by virtue of their repetition in the Torah? Maimonides in his commentary on *Mishnah Hullin* writes:⁵⁷

Note that an important fundamental is enunciated in this *mishnah*: "It was prohibited at Sinai." Everything we are forbidden or required to do devolves upon us only as a result of God's commandments to Moses; not because God so commanded any previous prophet. For example, we refrain from eating the flesh of a living animal not because this was prohibited to the descendants of Noah, but rather because Moses forbade us to do so as a result of the commandment he received at Sinai which stated that the flesh of a living animal remains

Anatoli, see note 3 above.

⁵⁷ *Commentary on the Mishnah* (trans. R. Yosef Kapah), *Hullin* 6:7. See also *Mishneh laMelekh*, *Melakhim* 10:7, s.v. *veHinei matzanu*; and Maharatz Hayyot, op. cit. (note 1 above), 11, p. 64ff. See also *Iggerot haRe'ayah*, III:811, p. 92: "Thus, Maimonides' approach fits well with that of the *Jerusalem Talmud*, while the approach of the *Geonim* [that what was given to the Patriarchs remains an uninterrupted obligation, and that the Torah simply added to this the contents of the Sinai revelation] fits well with that of the *Babylonian Talmud*."

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forbidden. Similarly, we circumcise our sons not because Abraham circumcised himself and his entire household, but rather because God commanded us through Moses to circumcise as Abraham did. Nor are we subject to the prohibition, placed upon Jacob, against eating the sciatic nerve [*gid hanasheh*], but rather by the command given to Moses. As they have said, six hundred thirteen commandments were given to Moses at Sinai, and all of these [that we mentioned] are numbered among the six hundred thirteen commandments.

Nevertheless, R. Yosef Engel,⁵⁸ in his *Beit haOtzar*,⁵⁹ attempts to draw the opposite conclusion (regarding the source of Israel's obligation to keep the Noahide laws). Basing himself on Maimonides' statement,⁶⁰ "Adam received six commandments..., and the Torah was completed by Moses," R. Yosef Engel comments:

It is clear from the words of Maimonides that the Noahide commandments as well as the commandment of circumcision and the prohibition of the sciatic nerve remain incumbent upon us based on their obligatory nature from before the Sinai revelation and that the Torah was in fact the completion of the remaining commandments that had not yet been given.⁶¹

A similar approach is articulated by R. Me'ir Simhah of Dvinsk⁶² who explains that⁶³

⁵⁸ R. Yosef Engel (1859-1920) served as rabbi of Cracow.

⁵⁹ *Beit haOtzar, ma'arekhet alef-bet, ot Zayin*, p. 5a. See also Appendix I below.

⁶⁰ *M.T., Melakhim* 9:1.

⁶¹ See further, *Beit haOtzar*, loc. cit. (note 59 above) and p. 8b.

⁶² R. Me'ir Simhah haKohen (1843-1926) served as rabbi of Dvinsk, Latvia.

⁶³ *Or Same'ah, Hilkhos Issurei Bi'ah* 3:2.

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those commandments which were given to the descendants of Noah are obligatory upon Jewish minors once they have attained the mental capacity to understand them..., since regarding the sanctity of the commandments, Israel was certainly bound after the Sinai revelation by that which had been previously commanded. The only distinction concerns punishment should a Jew actually violate one of these. Here, the Torah took pity upon Israel and provided for more lenient penalties.

Sefer haMiknah.⁶⁴ discussing the responsum of Rashbash⁶⁵ which was cited above, comments:

For violation of the seven commandments..., members of the Jewish people are most certainly to be punished, although these biblical prohibitions are not accompanied by a biblical warning. The principle that punishment may be administered only for violation of regulations accompanied by a biblical warning [*ein onshin ela im ken maz'hirin*] applies only to the “new” commandments given to Israel.⁶⁶

⁶⁴ R. Zussman Eliczer Sofer, *Sefer haMiknah* I, 8:5 (on R. Sofer, see note 200 below).

⁶⁵ *Resp. Rashbash* 543, quoted above, text to note 48.

⁶⁶ See *Encyclopedia Talmudit*, s.v. *Ein lemedim mikodem matan Torah*, vol. I, p. 635. See also suggestions of D. Frimer, “Israel, the Noahide Laws, and Maimonides: Jewish-Gentile Legal Relations in Maimonidean Thought,” *Jewish Law Association Studies*, II (1986), 89ff and particularly 92ff.

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NOAHIDE LAW AS NATURAL LAW AND EQUITY

Certain evidentiary and judicial guidelines applicable to criminal cases involving the descendants of Noah are discussed in the tractate *Sanhedrin*.⁶⁷

R. Ya'akov bar Aha found written in *Sefer Aggadeta deVei Rav*: "A descendant of Noah may be put to death on [the ruling of] one judge, on the testimony of one witness, without formal preliminary warning [that his crime is a capital offense], on the evidence of a man, but not a woman, even if he [the witness] is a relative." In the name of R. Ishmael, it is said, "A descendant of Noah may be put to death for feticide as well."

The *Talmud* goes on to inquire into the source for these reg-

⁶⁷ *Sanhedrin* 57b.

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ulations and to cite the biblical passage, “And surely your blood of your lives will I require; at the hand of every beast will I require it; and at the hand of man, even at the hand of every man’s brother, will I require the life of man” (Gen. 9:5). The verse is interpreted in the following fashion: “And surely your blood of your lives will I require” – even by one judge. “At the hand of every beast” – even without being warned in advance that the crime is a capital offense. “And at the hand of man” – even by the testimony of one witness. “Even at the hand of every man” – man but not woman. “Brother” – even by the testimony of a relative.

In *Genesis Rabbah*, we find:⁶⁸

“He who sheds man’s blood, etc.” (Gen. 9:6). R. Haninah said, “All of these are addressed to the descendants of Noah – at the testimony of one witness, by the ruling of one judge, without forewarning, by an agent, etc.”⁶⁹ Maimonides rules accordingly:⁷⁰

A descendant of Noah is put to death on the testimony of one witness, the ruling of one judge, without forewarning, on the testimony of relatives, but not on the testimony of a woman, and a woman may not preside as judge.

A number of these regulations will be further examined in chapter five; here, however, it may be noted that these regulations were understood to be a consequence of human nature. Biblical law as applied to members of the Jewish People added a number of restrictions, such as the requirement that cases be heard by a court of three judges – and in capital cases, 23 judges – and that a verdict be rendered only

⁶⁸ *Genesis Rabbah* 34.

⁶⁹ See J. Theodore and Ch. Albeck, op. cit. (note 1 above), ad loc.

⁷⁰ *M.T., Melakhim* 9:14.

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on the testimony of two witnesses. Natural law, it was held, does not require such restrictions, and consequently the descendants of Noah are not required to institute them.

Similarly, since those regulations that apply to the Noahide judicial system were all rooted in “common sense,” a question which would normally seem to be of only theoretical interest may be seen to have practical implications. Of every regulation it may be asked whether it is derived by application of the standard hermeneutical principles to the biblical text, or founded upon logic. Any regulation that is the result of pure logical analysis ought to apply not only to Jewish courts but to Noahide courts as well.⁷¹

According to Rav Kook,⁷² the Noahide commandments in general were considered to be “nearer to nature” than the commandments given to Israel which “reflect the holiness of the Torah.”⁷³ Thus, for instance, does Rav Kook⁷⁴ explain differences in the determination of family status: Noahides prescribe that matrilineal descent is determinative in all cases, while for Jews, it is recognized only in certain matters.⁷⁵ Rav Kook⁷⁶ writes:

⁷¹ See text to note 97 below; note 97 below; and text to notes 208, 210, 216, and 223 below, concerning various legal matters dictated by “common sense.”

⁷² On Rav Kook, see note 39 above.

⁷³ *Etz Hadar* (Jerusalem, 1927; republished with explanations and sources supplied by Yehudah Zoldan, Jerusalem, 1986) chapter 1 and n. 8.

⁷⁴ *Ibid.* See also his other proofs, *ad loc.* See also R. Reuven Margaliyot, *Tal Tehiyah, Mishpetei Ger Toshav*, p. 73. These points are expanded by Rav. Y. Shtiglitz, “Mitzvot Benei Noah,” *Kovetz Matatyah*, pp. 85-100.

⁷⁵ See *Yevamot* 54b: “The family of the father is defined as a family; the family of the mother is not defined as a family.”

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Common decency, an affinity for justice and honesty in concrete everyday matters, and an abhorrence of blatant evil and injustice are common to all men on earth. The Noahide laws are the basis of natural morality.⁷⁷

An interesting question in this regard arises from the distinction that Maimonides⁷⁸ draws between those who observe the Noahide commandments “[purely] by virtue of intellectual conviction” and those who observe them, “because they were commanded by God in the Torah, and through Moses He informed us of what the descendants of Noah had previously been commanded.” Only the latter, according to Maimonides, may be considered righteous non-Jews, who have a share in the world to come, while the former are merely wise non-Jews.

According to Maimonides, then, it appears that observance of the Noahide laws as a result of intellectual conviction is less worthy than their observance “because they were commanded by God in the Torah.” Observance of the commandments for reasons of natural morality seems to be inferior to observance by way of religious imperative. This is an apparent contradiction to the perception of the Noahide commandments as natural law.

Going to considerable lengths in his defense of Maimon-

⁷⁶ *Hevesh Pe'er*, *Ein Ayah* 16, p. 44a. See also *ibid.*, *Derushim*, *derush* 3, p. 29b.

⁷⁷ See also R. Samson Raphael Hirsch, *Gen. 2:16* (text to note 18 above), to the effect that the seven Noahide commandments are “the moral law of all mankind.” See also *haKetav veHaKabbalah*, *Deut. 20:10*; *Torah Temimah*, *Gen. 2*, n. 39, and *Ex. 21*, n. 277; and S. Atlas, “Ma’amado haMishpati Shel Ben Noah uMitzvotav,” in *Netivim baMishpat haIvri* (New York, 1979), pp. 21-40.

⁷⁸ *M.T.*, *Melakhim* 8:11; see above, text to note 24.

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ides against the attacks of Spinoza⁷⁹ on this question, Hermann Kohen⁸⁰ felt constrained to ascribe to Maimonides a distinction between the Noahide commandments as natural law on the one hand, and the rights and obligations of the Noahide as *ger toshav* (resident alien) on the other. In Kohen's view, in order to be considered a *ger toshav*, a Noahide must

protect himself against the possibility that his reason, his understanding, might one day cause him to decide differently, for instance, with regard to his abstention from idolatry in the Jewish state or from incest. If this decision were left to his own understanding, as his original decision would have been, the state would not be protected from the subjectivity of the individual.

Rav Kook⁸¹ suggests a novel approach, that in fact changes Maimonides' meaning entirely:

It seems to me that in the words "has a portion in the world to come," Maimonides means to denote a very low level of spiritual accomplishment (even though it is, of course, a great reward). Since [the world to come] is attainable by even the evil and ignorant of Israel it can only be considered an inferior level of spirituality, and since Maimonides believes that wisdom advances an individual even more than righteous behavior, he believes a portion in the world to come to be the level reached by those righteous non-Jews who have not acquired wisdom.... However, one who by virtue of intellectual conviction, has come independently to the ob-

⁷⁹ B. Spinoza, *Theologico-Political Treatise* in R. H. M. Elwes trans., *The Chief Works of Benedict De Spinoza* (New York, 1951), pp. 10, 79-80.

⁸⁰ Hermann Kohen, op. cit. (note 6 above), p. 332.

⁸¹ *Iggerot haRe'ayah* I:89, p. 100.

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servance of the Noahide commandments is truly wise-hearted and filled with understanding; he is considered to be a wise non-Jew. Although it goes without saying that such an individual has a portion in the world to come, he deserves a more apt description better suited to his high level of accomplishment.⁸²

What must be the content of the laws mandated for the descendants of Noah? Does the simple establishment of legally binding norms qualify as fulfillment of the commandment of *dinim*? If so, it follows that the citizens of biblical

⁸² That which remains uncertain to Hermann Kohen, “whether [according to Maimonides] a wise man is assured of a place in the world to come,” is a certainty to Rav Kook. S. Atlas, op. cit. (note 77 above), Introduction, p. 12, n. 4, argues that according to the original German text of Hermann Kohen, “his intention is to say that it is a certainty, in other words, the wise man is assured of happiness in this life and a share in the world to come.” See Atlas’ additional remarks, *ibid.*, pp. 15-16. Cf., however, the approach of M. Fox, “Maimonides and Aquinas on Natural Law,” *Dinei Yisrael*, III (1972), English edition, p. 5ff., particularly 12ff. Fox adopts the reading, “and *not* of their wise men,” arguing that this reading better suits Maimonides’ negation of Natural Law and his emphasis upon the divine source of law. See also Y. Y. Guttmann, *Dat uMada* (Jerusalem, 1955), pp. 200-201; and A. T. Revel, “leVirur Da’at haRambam beInyan Sakhar vaOnesh,” *Horev*, II (1935), 112. Y. Katz, “Sheloshah Mishpatim Apologeti’yim beGilguleihem,” *Tzion*, XXIII (1958-1959), 174, traces the history of the remark, “The righteous of the gentiles have a place in the world to come,” and particularly Mendelssohn’s view. See also *idem*, *Bein Yehudim leGo’yim* (Jerusalem, 1961), pp. 172, 176. See also *Resp. Maharam Alashkar* 117. The author rejects the objections of R. Shem Tov ibn Shem Tov to Maimonides, who, according to Shem Tov, had claimed that righteous gentiles, “who have acquired the knowledge are on the same level as the Jewish People, and neither is any greater than the other.” See also I. Twersky, *Introduction to The Code of Maimonides* (New Haven, 1980), p. 455, and *ibid.*, n. 239; and Jacob Dienstag, op. cit. (note 24 above).

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Sodom and those of a modern-day Sodom, such as Nazi Germany, have fulfilled the commandment of *dinim* simply by transforming their immoral *Weltanschauung* into legislation!⁸³

In the biblical declaration concerning Abraham, "For I have known him to the end that he may command his children and his household after him..., to do righteousness and justice..." (Gen. 18:19), there is a clear link between law and justice, and, as shown, the verse is cited in the tractate *Sanhedrin* in connection with Genesis 2:16: "And the Lord God commanded the man..." As we have noted,⁸⁴ however, Genesis 18:19 is not the *source* of the Noahide commandment of *dinim*, but rather a support or warrant for it. It is clear from the opinion of R. Moshe Isserles (*Rema*),⁸⁵ cited below,⁸⁶ that the purpose of *dinim* is the establishment of *just* laws. In explaining the opinion of R. Yohanan who derives the requirement of *dinim* from Genesis 2:16, Rema writes that, "Noahides are commanded to keep the local conventions and to judge justly between men, between citizen and stranger." In other words, *dinim* does not entail mere establishment of a legal system but rather, requires the establishment of a *just* legal system.

The requirement of a just legal system features in the writings of a number of scholars who have addressed the subject. So, for instance, R. Shelomoh Halma⁸⁷ in his *Mirkevet haMishneh*⁸⁸ writes:

⁸³ Nahum Rakover, *Shilton haHok*, (Jerusalem, 1989), Section 2, "Al Shilton haHok," ch. 1, "Mavo," pp. 63-65.

⁸⁴ Text to note 19 above.

⁸⁵ R. Moshe Isserles (1525-1572) wrote the gloss on *Shulhan Arukh*, known as *Mapah*.

⁸⁶ Text to note 124 below.

⁸⁷ R. Shelomoh Halma (1717-1781) served as rabbi of Helm (Poland)

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The commandment of judges can only mean the appointment of judges who will judge fairly and protect the oppressed from the oppressor. They must be fully conversant with all forms of trickery and fraud so as to know how to pass judgment; ...the aim of the appointment of judges is to inculcate justice, that they enforce honesty and withstand oppression.

Based upon the presumption that non-Jewish laws must be just, a contemporary authority, R. Isser Zalman Meltzer,⁸⁹ explains that if local (non-Jewish) law decrees that lost property must be returned even after *ye'ush*,⁹⁰ Jews are bound to comply. Although the Torah does not require return after *ye'ush*, the non-Jewish regulation does not contradict the Torah, since even under Jewish law, returning the object after *ye'ush* is considered honest, right and proper. This approach follows logically from the opinion of Rashi who linked *dina demalkhuta dina*, the requirement of Jews to observe the law of the land, to the *dinim* requirement of the descendants of Noah.⁹¹ R. Meltzer writes:⁹²

It is clear with regard to returning [lost] property after *ye'ush*, or stolen property sold by the thief after *ye'ush* [in which case an innocent buyer is not required by Jewish law to return his purchase to the victim of the theft], that the law of the land [*dina demalkhuta*] ap-

and Lvov (Galicia).

⁸⁸ *Mirkevet haMishneh*, *Melakhim* 9:14.

⁸⁹ R. Isser Zalman Meltzer (1870-1954) served as head of *Yeshivat Slobodka*, head of the *Yeshiva* of *Slutzk*, and head of *Yeshivat Etz Hayyim* in Jerusalem.

⁹⁰ *Ye'ush* is the owner's abandonment of the prospect of finding his lost property. According to Jewish law, *ye'ush* exempts the finder from the requirement of return.

⁹¹ Rashi, *Gittin* 9b, s.v. *Kesherin*. See text to note 105 below.

⁹² *Even haEzel*, *Hilkhot Nizkei Mamon* 8:5.

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plies. The reason is that such a regulation is not contrary to the laws of the Torah, since even according to the Torah, it is desirable to exceed the letter of the law. In such a case, the decree of the king [or legislature] is valid. It is included in the *dinim* precept, which means that Noahides are commanded to institute fixed regulations that will be just and not extortionate. Since this particular regulation is just, although the Torah ruled that property need not be returned after *ye'ush*, the regulation, is not overridden by the authority of the Torah. Only in a case where the king's decree does not merely demand going beyond the letter of the Torah's law, but actually *goes against* it, do we rule that the king's authority does not override the Torah, as when the king's decree is extortionate. In return of property after *ye'ush*, however, since the regulation is just, it is valid, for it is within the king's legitimate authority to issue decrees for the common good.⁹³

⁹³ Cf. R. Shimon Sofer ([1850-1944] a Hungarian rabbi, grandson of *Hatam Sofer*), *Hitorerut Teshuvah*, II:24, bases the right of heirs to literary works of the deceased on the principle, "the law of the land is binding." According to R. Sofer, from the conclusion that based upon the law of the king, it is obligatory to return a found object even after *ye'ush*, it is learned that any act of decency that is the product of common sense and convention as would be required by the verse (Deut. 6:18), "And you shall do that which is right and good in the sight of the Lord..." is subject to "the law of the land is binding." This is in accordance with the commentary of Nahmanides (*ad loc.*), that every act of basic human honesty that is a matter of common sense is included in this commandment. See also Nahum Rakover, *Copyright in Jewish Law* [Hebrew] (Jerusalem, 1991) I:4; and cf. R. Sofer's remarks in *Hitorerut Teshuvah* I:232. See also *ibid.*, 109, where R. Sofer concludes, concerning the law of the land, that if an employee is granted a raise in wages three years in a row, one is obligated to grant a raise every year thereafter: "And another thing seems clear to me in this matter, that also according to Jewish law,

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As Hazon Ish⁹⁴ writes:⁹⁵

The requirement of *dinim* means that the Noahides became obliged to establish laws of honesty and right behavior; with the exception of those laws which are clearly addressed to them, they are not bound by the laws of the Torah.

The view that the descendants of Noah are bound to observe rational commandments can be found in *Meshekh Hokhmah*, by R. Me'ir Simhah haKohen of Dvinsk,⁹⁶ who holds that descendants of Noah are punished for swearing needlessly or falsely. That the seven Noahide commandments do not contain a proscription of false and needless oaths, means only that Noahides may not be *prosecuted* for a violation. They do, however, incur divine retribution, since this is a rational commandment.⁹⁷

based upon 'And you shall do that which is right and good in the sight of the Lord,' this must be done. It is only that the court is not empowered to enforce this. Thus, since it is the law of the land, it receives the force of 'the law of the land is binding.'" Cf. also R. Sofer's approach, *ibid.*, 118, where, reasoning *a fortiori* from the Noahide prohibition of theft, he rules that it is forbidden for one gentile to deceive another: "And although the application of *a fortiori* reasoning is one of the standard hermeneutical principles by which the Torah is interpreted – principles given only to the Jewish People – it is nonetheless *sensible* that the law is thus."

⁹⁴ Hazon Ish, R. Avraham Yishayahu Karelitz (1878-1953) was one of the most distinguished rabbinic authorities of the last generation.

⁹⁵ *Hazon Ish*, *Baba Kama* 10:3.

⁹⁶ *Meshekh Hokhmah*, Ex. 20:7. On the author of *Meshekh Hokhmah*, R. Me'ir Simhah haKohen, see note 62 above.

⁹⁷ He also cites *Mishneh laMelekh*, *Melakhim* 10:7, s.v. *Shuv ra'iti*: "And certainly swearing is a rational commandment, that is, not to swear falsely by His name." Regarding the opinion of *Mishneh laMelekh*, see also *Sedei Hemed*, *Pe'at haSadeh*, *ma'arekhet gimel*, 6:30. Concerning the obligations of the descendants of Noah with regard

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to false oaths, see *Sedei Hemed*, *ma'arekhet gimel* 55:25 and *Pe'at haSadeh*, *ma'arekhet gimel* 6:17. See also Shemu'el ben Hofni Gaon, op. cit. (note 8 above), who infers the "prohibition of swearing falsely from Gen. 21:23 where the king Avimelekh says to Abraham, 'And now, swear to me by God...' for if he believed that it was permissible to violate oaths, he would not demand [that Abraham take one]." See also the approbation of R. Elazar Moshe haLevi, Ish-Horowitz, head of the rabbinical court of Pinsk, to the Vilna edition of the *Talmud*, cited in Nahum Rakover, *Copyright in Jewish Law*, op. cit. (note 93 above), II:10, sec. 11. Cf. also the remarks of the author of *Mishneh laMelekh* in his *Parashat Derakhim*, where he holds that although the descendants of Noah are not obligated to sanctify the name of God [through martyrdom], they are yet considered guilty of bloodshed if they kill under duress, since the prohibition of bloodshed even under duress is derived by logical deduction: "What makes you think that your blood is any redder than his?!" (*Sanhedrin* 74a). See also the remarks of the editor of *Mishneh laMelekh*, *Melakhim* 10:2. See also *Margaliyot haYam*, *Sanhedrin* 56b:8, in the name of *Ahavat Olam* (by R. Shelomoh Algazi). The author of *Margaliyot haYam* rules that a descendant of Noah is held responsible for a violation of any of the seven commandments even if the violation is unintentional, since they are rational commandments. See also, *Or haHayyim*, Ex. 10:24, concerning the proper method of stipulating conditions to transactions: "And had he [Pharaoh] first said, 'your children may go with you' and afterwards stipulated, 'but your livestock must stay,' then the agreement [to release the Children of Israel] would have been binding, and the condition would have been null and void. For perhaps non-Jews also observe this, since it is a matter of common sense, and it is a routine feature of business transactions." *Or haHayyim* is not referring to an obligation of non-Jews derived from the Noahide commandment of *dinim*, but rather explains the biblical passage on the basis of what was apparently routine practice among the non-Jews. This same principle is used by Radbaz (*Metzudat David* 568) in his explanation of the obligation to testify: "The point of these commandments is clear from common sense, and the authorities of other well-mannered religions discuss them – that is to say that it is fitting for a person to testify to what he has seen. Thus society can be maintained, for if witnesses will not testify, theft, murder and the like will increase."

Chapter Three

Rav Kook⁹⁸ emphasizes (in a number of places) the idea of fundamental human honesty, arguing that the Noahide commandments – all of them, not just *dinim* – are ontologically different from Israel's commandments:

According⁹⁹ to the opinion of Nahmanides that the details of Noahide law may certainly be at variance with Jewish law, the laws of Israel are based upon holiness, the holiness of the Torah, while the Noahide laws are based upon fundamental human honesty.

Later Rav Kook states:¹⁰⁰

Clearly, according to the Torah, the laws that bind the descendants of Noah are only the broad outlines. They are not bound by the details of Torah law, but rather by the decrees that their own judges issue based upon fundamental human honesty.

And elsewhere:¹⁰¹

The details of their laws are according to the standards demanded by their judges for the establishment of justice and the functioning of the country. These standards vary according to the situation, and it may certainly be

⁹⁸ On Rav Kook, see note 39 above.

⁹⁹ *Etz Hadar*, chp. 40, text to n. 11.

¹⁰⁰ *Ibid.*, text to n. 16.

¹⁰¹ *Ibid.*, chp. 42, text to n. 7. See also his remarks in *Resp. Orah Mishpat*, *Hoshen Mishpat* 4: "And in our time, when the laws of the Torah are not upheld – for the halakhic authorities of today are deemed *hedyotot* [not qualified in certain areas] – still it seems that the principles of equity apply by force of biblical law on the basis of the *dinim* of the descendants of Noah, since we are no worse than they [in this respect]. Thus, wherever a judge sees an injustice that needs to be rectified, a situation dictated by common sense and the honor of God, consistent with the state of the generation, he must act according to the wisdom of his heart."

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presumed that past judicial ruling need not be taken into account.

With all this in mind, we can understand that there is an exhortation to anyone capable of doing so, to influence a descendant of Noah to observe the seven commandments. This is found in the words of the Lubavitcher Rebbe who declared that whoever has relations with non-Jews (e.g., in business) must utilize every opportunity “to persuade them and explain that God has given them the seven commandments for the purpose of making honesty and justice prevail in the world.”¹⁰²

¹⁰² See *Admor of Lubavitch*, R. Menahem Mendel Schneersohn, “Sheva Mitzvot Benei Noah” *haPardes* LIX:9 (Sivan, 1985), 7-11, see p. 11. The passage is cited also in S. T. Stern, *Resp. Shavit* VII, p. 4.

Chapter Four

THE LAW OF THE STATE AND THE LAW OF THE KING

The impact of the Noahide requirement of *dinim* on legal relations between Jews and non-Jews finds expression in the principle, *dina demalkhuta dina* – the law of the king is law (i.e., the law of the land is binding).¹⁰³

The Rabbis taught: ...Documents executed in non-Jewish courts, even if the signatures upon them are those of heathens, are valid, except writs of divorce....¹⁰⁴

What is the difference between general documents that are valid, and writs of divorce and emancipation which are not?

¹⁰³ On the principle, “The law of the land is binding,” see Nahum Rakover, *Shilton haHok*, op. cit. (note 83), Section 2, “Al Shilton haHok.”

¹⁰⁴ *Gittin* 9a-b.

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Rashi offers an interesting approach. Regarding valid documents, he writes,¹⁰⁵ “The law of the land is binding, even though both parties are Jewish.”¹⁰⁶ With regard to writs of divorce and emancipation, he continues,¹⁰⁷ “[non-Jews] may not be parties to a divorce action, since they are not subject to the [Jewish] laws of marriage and divorce; they are, however, subject to *dinim*.” In other words, since non-Jews are not subject to the laws of marriage and divorce, but are subject to the commandment of *dinim*, documents executed in non-Jewish courts are valid, in accordance with the principle, the law of the land is binding.¹⁰⁸ The principle does not apply, however, to matters, such as Jewish marriage and divorce, to which they are not subject.¹⁰⁹

¹⁰⁵ Rashi, ad loc., s.v. *Kesherin*.

¹⁰⁶ This is in accordance with the talmudic discussion, ad loc.

¹⁰⁷ *Gittin* 9b, s.v. *Hutz migittei nashim*.

¹⁰⁸ See note 229 below for remarks of *Or Zaru'a* based on Rashi's comments cited here.

¹⁰⁹ See also comments of *Hagahot Asheri*, *Gittin* 1:10 (in the name of *Sefer haHokhmah*), to the effect that idolators are not disqualified by the Bible from testifying in court. See also, *Resp. Redakh*, *Bayit* 20, p. 50, column 3, s.v. *veKhen nami*, “It may be inferred from [Rashi's] words that since they were commanded concerning *dinim*, according to the Bible they are qualified to give testimony, for if we conclude that Rashi agrees with the Tosafist Rabbenu Yitzhak, what difference does it make whether they were commanded or not...? However, it certainly appears that Rashi holds that when it is clear that he is not lying, according to biblical law an idolator is qualified to testify.” See also *Tashbetz* 1:78; *Resp. Mabit* 1:37; *Resp. Be'er Yitzhak*, *Even haEzer* 5:6; *Resp. Mishpetei Uzi'el* III, *Hoshen Mishpat* 17; *Resp. Iggerot Moshe*, *Yoreh De'ah* 1:55, s.v. *uMah*; *Resp. Tzitz Eliezer* XIII:105, p. 116; and the citation in the name of R. Me'ir Dan Plotzki, note 256 below. *Hiddushei Hatam Sofer*, *Gittin* 10b, s.v. *Bishlama*, attempts to explain the dispute between Rav Yakir and

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R. Ya'akov Anatoli takes a similar approach, concluding his explanation of *dinim* with the statement,¹¹⁰ "And our Sages established that the law of the land is binding."

R. Anatoli dwells at some length on Exodus 21:1-24:18 (*Parashat Mishpatim*) and holds as mistaken much that has been said regarding, "the law of the land is binding." Asserting that most judicial decisions are rendered on the basis of logical deduction, he discusses the freedom to pass new legislation, the latitude given to judges in arriving at their rulings, and the importance of law in general. Because of their importance, we quote his remarks in full:¹¹¹

All the regulations found there [in Ex. 21:1– 24:18] were written in very abridged form. There are many regulations that the Pentateuch does not mention at all

Mordekhai concerning whether a non-Jew is qualified to testify and argues that the acceptability of the testimony of a non-Jew in civil cases is dependent upon whether non-Jews are commanded concerning these matters as Jews are, or are subject, rather, to different regulations. See also *Resp. Ezrat Kohen* 22; R. Reuven Margaliyot, *Tal Tehiyah, Mishpetei Ger Toshav*, p. 74; and R. Me'ir Schlessinger, "Shitat Rashi be'Edut Goy," *Sha'alei Da'at*, V (Av, 1987), pp. 9-12. *Resp. Maharit II, Hoshen Mishpat* 35, s.v. *veOd*, states that "since the descendants of Noah are commanded concerning *dinim*, their judgments are binding." See also *Resp. Maharsham* V:21; *Even haEzel, Hilkhos Nizkei Mamon* 8:5; *Piskei Din Rabbaniyim* (Judgments of Rabbinic Courts in Israel), vol. V, p. 268. *Resp. Tzitz Eliezer* XIII:105, p. 216, argues against the opinion of R. Yitzhak Agnon in *Sedeh Yitzhak* 16. R. Agnon, on the basis of the opinion of Rashi and *Sefer haHokhmah* cited above, asserts that in all matters concerning which the descendants of Noah were commanded, their status is identical to that of Jews and that they are considered "your brother." See also S. Shiloh, *Dina deMalkhuta Dina* (Jerusalem, 1975), pp. 82-83; and Nahum Rakover, *Shilton haHok*, p. 66, nt. 15.

¹¹⁰ *Malmed haTalmidim*, 12a.

¹¹¹ *Ibid.*, 71b-72a.

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or at which the Torah does not hint, regulations that appear in the *Talmud* without so much as a query concerning their source. Nor do we find that these regulations were transmitted orally. This is because the commandment of *dinim* was very ancient and differed from the rest of the commandments of the Torah. When the descendants of Noah were commanded concerning *dinim*, the commandment was only that they establish laws among themselves, for the world rests on law. Thus also, even after the Sinai revelation: the judges were directed to establish legal norms suited to their nations concerning what had not been commanded. And so it is practiced today among the nations. Merchants and artisans were also instructed to establish regulations among themselves. Donkey drivers are permitted to agree among themselves that when one loses a donkey, the others will replace it, and seamen are permitted to agree among themselves that if one loses a ship, the others will replace it. Similarly, they may agree that if a slaughterer works on a day not designated as his, the skin of his beast shall be destroyed. [Or as established in the *Talmud*,] basket weavers and wool merchants who journey to another town may be prevented by that city's merchants from selling their wares. In all such cases, since the Torah has enjoined obedience to the judges of every generation, it is as though the law were written in the Torah, and anyone who violates it violates the Torah itself.

All this relates to the principle, "the law of the land is binding." Since the commandment of *dinim* is ancient, and since it is impossible to provide for every new situation, it follows that the decree of the king should be valid and that we should issue rulings in accordance with it, providing it does not contradict the Torah. And it seems to me that many have erred here. Even some of the talmudic Sages thought to expand this

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principle beyond the intention of Shemu'el [who first articulated it] to embrace circumstances that did not warrant it.

In summary, we may say that some of our laws were established by the sages of the *Talmud* on logical grounds in accord with what they saw as proper social conduct. Cases for which they had no logical proof or disproof they justified by reference to authoritative precedents. All of this is supported by the pronouncement of King Jehoshaphat to the judges he appointed (II Chron. 19:6), "[The Lord is] with you in giving judgment." The meaning of the principle, "The judge considers only what his own eyes see," is that after he takes the effort to investigate and issue a ruling, God Himself concurs. God's spirit [*Shekhinah*] abides among the judges as is written (Ps. 82:1), "God stands in the congregation of God; in the midst of the judges does He judge." And since most of the laws are founded upon reason and not based upon any source in the Written or Oral Law, Jehoshaphat was compelled to caution the judges (II Chron. 19:6), "Consider what you do; for you judge not for man, but for the Lord," meaning that the ideal judgment is that which emulates the Creator Who established the entire creation upon justice, for all of His ways are just, as He said (Jer. 22:16), "He judged the cause of the poor and the needy. *'Is not this to know Me [the Lord].'*" And since He is thus, He Himself is judged by the same criteria. One may even conclude, on the basis of Jeremiah 19:6 that the message Jehoshaphat was conveying to the judges was that they were not judging as a result of being appointed by the king, but rather as a result of being commanded to do so by God Himself. And so the Sages have said, "Let the judges know whom they are judging and *before* whom they are judging." Thus we see that Moses would sit in judgment without consulting God on each and every matter. Af-

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terward, when he appointed judges, they would issue rulings with regard to simple matters that were within the scope of their own reason, as is written (Ex. 18:22), "And let them judge the people at all seasons; and it shall be, that every great matter they shall bring unto you, but every small matter they shall judge themselves...." And this appears in the Pentateuch before the Ten Commandments.

With regard to the conception that Noahide law is an expression of a sort of universal natural law, an interesting parallel is found between Noahide law and the law of the king, which was also recognized as a function of natural law.¹¹² One of the sages of the previous generation, R. Me'ir Dan Plotzki, sought the authority for certain regulations regarding the king, (e.g., the king's recognized right to pass judgment based upon the testimony of one witness only) in Noahide law. In his *Hemdat Yisrael* on *Sefer ha-Mitzvot* of Maimonides, he writes:¹¹³

Two types of political order are known, natural order, that is to say, Noahide order, and the order decreed by our holy Torah. The latter was given to Israel at Sinai. Descendants of Noah may be executed upon the testimony of one witness and the ruling of one judge, whereas according to Torah procedure, an accused may be judged only by a court of 23, on the testimony of at least two witnesses, and only after being forewarned. The Torah's demands go beyond those of natural law. The king's system, on the other hand, is based on the natural order as is clear from the verse (Deut. 17:14), "...and [you] shall say, 'I will set a king over me, like all the nations that are round about me.'" Thus, since

¹¹² See text to note 35 above.

¹¹³ *Hemdat Yisrael*, *Kuntres Ner Mitzvah*, 72:288, p. 38. See Ran's comments in *Derashot haRan* 11.

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the king judges according to Noahide law, which permits execution upon the testimony of one witness, the king may also prescribe capital punishment upon the testimony of one witness.

R. Plotzki draws the parallel even further arguing that the king's jurisdiction is limited *exclusively* to matters treated by Noahide law.

[The jurisdiction of the king] is restricted to those matters dealt with in Noahide law, the regulations necessary for the common good. With regard to these laws, the king is permitted to rule on the testimony of one witness.... This does not apply, however, to those commandments revealed to Israel in the Torah. The law of the king does not pertain to these, since these are commanded in the Torah, and according to Torah law, capital punishment may be administered only upon the testimony of two witnesses, by a court of twenty-three, to an offender who has been forewarned.¹¹⁴

On the other hand, the law of the king may yield information about Noahide law. *Sefer haHinnukh*¹¹⁵ writes that a descendant of Noah may be executed upon his own admission of guilt, and many have wondered what might be the source for this view. R. Plotzki, however, believes that even Maimonides would concur, for Maimonides¹¹⁶ writes that King David's execution of the lad who had killed King Saul

¹¹⁴ See also *Hemdat Yisrael*, *Kuntres Ner Mitzvah*, pp. 100a-b, and the indices and supplements thereto, p. 14b, and idem, *Keli Hemdah*, *Parashat Shemot*, p. 146, and *Parashat Shofetim*, p. 119. See also R. Yehudah David Bleich, "Mishpat Mavet beDinei Noah," in *Sefer haYovel leRav Y. D. Soloveitchik* (Jerusalem, 1984), vol. 1, p. 199, n. 10.

¹¹⁵ *Sefer haHinnukh* 192.

¹¹⁶ *M.T., Sanhedrin* 18:6.

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based upon the lad's own admission (II Sam. 1:15ff.) was by the authority of the law of the king. Were it the case that a descendant of Noah may not be executed upon his own admission, then the king would not be permitted to execute an offender upon his own admission either.

R. Me'ir Simhah haKohen of Dvinsk¹¹⁷ also recognizes the equivalence of Noahide law and the law of the king.¹¹⁸ At first, he reacts to Maimonides¹¹⁹ with surprise:

At this I am astonished, that our teacher [Maimonides] wrote that the king may execute on the testimony of one witness. Should we then abandon an accused to possible execution by virtue of the testimony of only one witness?!

R. Me'ir Simhah attempts to explain Maimonides' ruling that only in the Sanhedrin, operating according to Torah legislation, are two witnesses required. The king, however, who has the authority to punish in order to ensure good public order, judges according to Noahide principles, admitting the testimony of a single witness:

And it seems to me that our teacher [Maimonides] holds that since Noahide law permits execution upon the testimony of a single witness, if the *go'el hadam* [blood redeemer] kills a murderer on the basis of the testimony of only one witness, he is not put to death. Similarly, a Jewish king may also have the offender executed in such a case. For it is only with regard to the Sanhedrin, which is commanded to rule according to biblical law, that two witnesses are required. However, the king and the *go'el hadam*, both of whom are permitted for the

¹¹⁷ On R. Me'ir Simhah haKohen of Dvinsk, see note 62 above.

¹¹⁸ Or *Same'ah*, *Hilkhot Melakhim* 3:10.

¹¹⁹ *M.T.*, *Melakhim* 3:10.

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public good to impose capital punishment, act according to the procedures of Noahide law. And this is logical.

R. Me'ir Simhah utilizes the same principle to explain the ruling of Rosh (Rabbenu Asher)¹²⁰ which states that cases involving the property of a non-Jew require the testimony of two witnesses. Although one might presume that if a descendant of Noah may be executed on the basis of the testimony of one witness, litigation over his property should *certainly* be so decided, this is not the case. An accused may be executed on the testimony of one witness,

because of the great evil he has committed by murdering or engaging in adultery. But when his ox damages another man's ox, two witnesses are required [for a ruling], for there is no great evil involved, only monetary damage.

An example of the same principle may be found in the case of one who entraps his victim in a confined space causing him to die of dehydration. If the victim is an animal, the perpetrator is exempt from paying damages, since he has not actually killed the animal but only *caused* its death. If, on the other hand, the victim is a human being, the perpetrator is guilty of murder,¹²¹ since he has perpetrated a "great evil."¹²²

¹²⁰ *Piskei haRosh, Baba Kama* 1:19; see text to note 265 below.

¹²¹ According to *Sanhedrin* 76b.

¹²² See also Y. Blidstein, *Ekronot Mediniyim beMishnat haRambam* (Jerusalem, 1983), pp. 130ff.

Chapter Five

THE CONTENT OF 'LAW'

A. Are Jewish Law and Noahide Law Identical?

As mentioned above, according to the law as stated in *Sanhedrin* 57b, capital punishment may be imposed upon descendants of Noah by one judge, upon the testimony of one witness, and without the offender's having been warned in advance of the consequences of his crime. At this point we must ask, what might be the content of other laws that were not explicitly described in the *Talmud*? Is Noahide law simply identical with Jewish law, or are the descendants of Noah obligated to legislate their own laws? If Noahide law is identical with Jewish law, it must be asked whether the descendants of Noah are bound by the authoritative legal interpretations of the Oral Law, or only by that which appears in the Written Law (Pentateuch). If, on the other hand, Noahide law is not identical with Jewish law, it must be ascertained whether the descendants of Noah may pass any legislation they please, or whether they are bound by certain fundamental principles.

In dealing with these issues, we may begin with a rela-

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tively late authority, R. Moses Isserles (Rema),¹²³ who writes that the answers to these questions depend upon a talmudic debate. After studying Rema's approach, we will investigate whether it is possible to discover the opinions of the *Rishonim* (Earlier Authorities, who preceded Rema) and finally study the opinions of the *Aharonim* (Later Authorities, active after Rema).

Rema's view appears in his well known responsum regarding an alleged violation of the rights of R. Me'ir of Padua that took place with the printing of a particular edition of Maimonides' *Mishneh Torah*.¹²⁴ In that case, a wealthy noble printed an edition of Maimonides' *Mishneh Torah*, in order to drive sales away from R. Me'ir of Padua and leave him in financial ruin. Rema decided that R. Me'ir of Padua could prevent the noble from printing his edition, as it violated the prohibition of unfair competition. In doing so, Rema indirectly equated Jewish law with Noahide law regarding "theft."

According to Rema, the question of the identity of the two legal systems – Jewish law and Noahide law – depends upon a talmudic debate, found in the tractate *Sanhedrin*, between R. Yitzhak and R. Yohanan regarding the source of the Noahide obligations. According to R. Yohanan, who infers *dinim* from the Hebrew word *vayetzav* – "and He commanded" (Gen. 2:16),¹²⁵ Noahides are permitted to legislate their own laws. R. Yitzhak, on the other hand, infers *dinim* by word analogy (*gezerah shavah*) from the word *Elohim* found in the same verse. To elaborate, since in the context of Exodus 22:7, *elohim* (the normal meaning of which is

¹²³ On R. Isserles, see note 85 above.

¹²⁴ *Resp. Rema* 10. On this topic, see also Nahum Rakover, *Copyright in Jewish Law*, op. cit. (note 93 above), pt. II.

¹²⁵ See text to note 17 above.

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"God") clearly has the sense of "court," here too, it may be understood as an allusion to the obligation to establish a court system. Rema explains that if the commandment of *dinim* is inferred from *elohim* as used to signify court of law in a Jewish legal context, then the *dinim* of the descendants of Noah must be the same as those of the Jewish people:

Thus it appears that there was no need for the *Talmud* to explicate the differences between the opinion of R. Yohanan and that of R. Yitzhak, for the matter is as clear as the sun at midday. R. Yohanan, who infers *dinim* from the word *vayetzav*, holds that the descendants of Noah are commanded only to observe the regulations of their country and to judge honestly between men, though not necessarily according to the principles handed down to us at Sinai. Noahide law [according to this approach] is a matter of convention....

R. Yitzhak, however, takes a different approach, inferring *dinim* by word analogy from use of the word *Elohim* in Genesis 2:16 and in the verse "...then the master of the house shall come near unto God [i.e., the judges], etc." (Ex. 22:7). In other words, R. Yitzhak holds that the *dinim* of the descendants of Noah are the same as those commanded to the Jewish people at Sinai. This is why he infers *dinim* from a text given at Sinai, since the two [systems] are one and the same.

Rema goes on to rule that the law is in accord with the view of R. Yitzhak, "that is to say, they were commanded all the laws of Israel – the generalities as well as the details." Rema brings a number of proofs for his opinion.

We turn now to an examination of the views of the Early Authorities, Maimonides and Nahmanides. Maimonides

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writes:¹²⁶ “A non-Jew who studies Torah is guilty of a capital offense. He should study his seven obligations only.” This passage may be understood in a number of ways. One way would be to infer that in the observance of their seven commandments, non-Jews are bound by all the details delineated in Jewish law, which they may, therefore, study.¹²⁷ Another way would be to conclude that although non-Jews are *not* bound by the specifics of Jewish law, Maimonides permits them to study the generalities (even though these too appear in the Torah) by reason of his definition of a righteous non-Jew as “...one who has accepted the commandments because [he believes] they were commanded by God in the Torah, and through Moses He informed us of what the descendants of Noah had previously been commanded.”¹²⁸

However, another of Maimonides’ remarks¹²⁹ suggests that his opinion is that the descendants of Noah are clearly *not* commanded regarding the specifics of Jewish law. As

¹²⁶ *M.T., Melakhim* 10:9.

¹²⁷ The source of this law is to be found in *Sanhedrin* 59a, where the *Talmud* poses a question based upon the statement of R. Me’ir, “From where is it known that even a non-Jew who studies the Torah is considered as great as the High Priest?” and answers, “From the verse ‘...[My statutes and My ordinances], which if a man do, he shall live by them...’” (Leviticus 18:5). The *Talmud* concludes that R. Me’ir’s declaration applies only to the “their seven commandments,” and Rashi comments: “...they study the laws of those seven commandments to become proficient in them.” See also Me’iri, *Beit haBehirah, Sanhedrin*, ad loc. (ed. Avraham Sofer, p. 229), “In any case, as long as he studies the seven commandments, their details and implications, even though they encompass most of Jewish law, he is to be honored even as much as a High Priest, ...since he is studying that which belongs to him.”

¹²⁸ *M.T., Melakhim* 8:11.

¹²⁹ *Ibid.*; see text to note 24 above.

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mentioned, Maimonides discusses those who observe the Noahide commandments “*by virtue of intellectual conviction*,” and intellectual conviction cannot bring one to the discovery of the specifics of Jewish law.¹³⁰

One of Maimonides' rulings regarding inheritance also seems to suggest that Noahide law and Jewish law are not identical:¹³¹ “Under biblical law, a non-Jew inherits his father. With regard to all other matters of inheritance, we permit non-Jews to act according to their own practices.”¹³² However, the reference to “practices” may simply mean that their laws in this area, just as ours, may be altered by legislation or custom.

¹³⁰ It seems clear to R. Hayyim Sofer (on R. Hayyim Sofer, see below, note 218), *Mahaneh Hayyim* II, *Yoreh De'ah* 8, p. 31, s.v. *Akh*, ad fin., that according to Maimonides, the Noahide laws are “according to their conventions.” A concurrent reading of Maimonides may be found in *Nahal Yitzhak*, *Hoshen Mishpat* 91. Thus *Margaliyot haYam*, *Sanhedrin* 56b:10, also shows that it is Maimonides' opinion that their laws are not the same as our laws. R. Katri'el David Kaplan agreed with this in his responsum cited in *Resp. Minhat Yitzhak* IV, 52:3. And so it appears from the text of Maimonides, *M.T.*, *Melakhim* 10:12 (quoted below, text to note 257): “If two non-Jews come before you wishing to be judged according to Jewish law, they are judged according to Jewish law. If one wishes to be judged according to Jewish law and the other does not, the one who does may not compel the other to be judged according to Jewish law, rather they are to be judged according to their law.” Accordingly, it appears that their laws are not the same as ours, unless we interpret the distinction drawn here as referring only to rules of evidence, which are clearly different.

¹³¹ *M.T.*, *Nahalot* 6:9.

¹³² *Resp. Yehaveh Da'at* IV:65, based on this passage, argues that “they are not required to judge according to the specifics of Jewish law.” See also *Keter David* (Kaplan) 18, p. 101.

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sponsum regarding the permissibility of delivering a lecture on a talmudic subject at a non-Jewish university, R. Yehi'el Ya'akov Weinberg¹⁴⁹ agrees with the questioner that legal material is an example of *dinim* concerning which the descendants of Noah have also been commanded.¹⁵⁰

Other Later Authorities have not accepted Rema's opinion. R. Natan Mez,¹⁵¹ in his work *Binyan Olam*,¹⁵² prefaces his opinion with the reservation that he is speaking only theoretically, but expresses his surprise at Rema's ruling:

It does not make sense that a descendant of Noah would be required to learn all of our civil law. Besides, the Bible clearly states, "He declares His word to Jacob, His statutes and His ordinances unto Israel. He has not dealt so with any nation; and as for His ordinances, they have not known them" (Psalms 147:19-20). The sources also demonstrate that the matter is not as Rema has ruled.

R. Hayyim of Volozhin¹⁵³ believes that,¹⁵⁴ "they were given no instruction regarding what and how, but were rather expected to proceed according to common sense." Netziv of

¹⁴⁹ R. Yehi'el Ya'akov Weinberg (1885-1966) was a rabbi, talmudic scholar, Jewish philosopher, lecturer in *Talmud*, and rector of the rabbinical seminary of Berlin.

¹⁵⁰ *Resp. Seridei Esh* II:92.

¹⁵¹ R. Natan Mez (d. 1794) was head of the *yeshivah* and rabbinic court of Frankfurt-am-Main.

¹⁵² *Binyan Olam*, *Sanhedrin* 56b, s.v. *Sham baGemara*.

¹⁵³ R. Hayyim of Volozhin (1749-1821) was the leading student of the *Gaon* of Vilna and founder of the *yeshivah* of Volozhin.

¹⁵⁴ *Ru'ah Hayyim*, *Avot* 5:10, s.v. *Sheli shelkha, veshelkha sheli – am ha'aretz*.

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Volozhin,¹⁵⁵ in his *Ha'amek She'elah*,¹⁵⁶ argues against Rema, "Everyone agrees that the descendants of Noah did not receive the specifics of the law and that they were commanded only to appoint judges [who would rule] according to their own understanding (as in the case of the 'courts of Syria')." He adds that descendants of Noah are forbidden "to take the law into their own hands."¹⁵⁷

Hazon Ish¹⁵⁸ also appears to hold that Jewish law is not applicable to the descendants of Noah:¹⁵⁹

The meaning of their obligation of *dinim* is that they are required to establish laws of honesty and right behavior; they are not bound by the laws of the Bible except those that they were commanded explicitly (e.g. prohibition of murder, etc.). That which Israel was commanded, to judge between one man and another, was not addressed to the descendants of Noah.

R. Yehi'el Mikhel Epstein,¹⁶⁰ author of *Arukh haShulhan he'Atid*¹⁶¹ agrees with these opinions: "And it is clear that their *dinim* are not meant to be the laws of the Torah, but rather convention. And although there are those who have investigated this extensively, the truth is as I have written, and there is no need to go to any further length on this matter."

¹⁵⁵ R. Naftali Tzvi Yehudah Berlin (1817-1893); Netziv was head of the *yeshivah* of Volozhin.

¹⁵⁶ *Ha'amek She'elah*, 2:3.

¹⁵⁷ See also *Meromei Sadeh*, *Sanhedrin* 56b, s.v. *Dinin*; and *Resp. Mishneh Halakhot* VII:255.

¹⁵⁸ On Hazon Ish, see above, note 94.

¹⁵⁹ *Hazon Ish*, *Baha Kama* 10:3.

¹⁶⁰ R. Yehi'el Mikhel Epstein (1829-1908) served as rabbi of various cities in White Russia, the last being Novogradok. His most important work was *Arukh haShulhan*, which treats the full range of Jewish law appearing in *Shulhan Arukh*.

¹⁶¹ *Arukh haShulhan he'Atid*, *Hilkhot Melakhim* 79:15.

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R. Me'ir Dan Plotzki¹⁶² appears to lean towards rejecting the Rema's ruling:

This seems to support those authorities who have argued against Rema's holding that, in practice, we rule according to R. Yitzhak who infers *dinim* from *elohim*, and that consequently descendants of Noah must judge according to the laws of the Torah.... On the contrary, it is accepted that according to all opinions in the *Talmud*, descendants of Noah need give judgment in accordance with convention only, not biblical law.

R. Tzvi Pesah Frank¹⁶³ addresses the present question in his explanation of the benediction of R. Hagai.¹⁶⁴ The benediction under discussion singles out Israel as the recipient of *dinim*, despite the fact that the descendants of Noah were also commanded concerning *dinim*.¹⁶⁵

Perhaps *dinim* is different, for there is a great difference between their laws, which are based upon human understanding, and the laws of Israel, which were given by God at Sinai. Thus it is proper to declare in the benediction, "Who commanded *us*," since He has not dealt so with any other nation; and as for His ordinances, they have not known them.¹⁶⁶

Later Authorities are also divided with regard to the opinions of Maimonides and Nahmanides on the question of whether Noahide law should be identical with Jewish law.

¹⁶² *Hemdut Yisrael, Kuntres Ner Mitzvah*, p. 99b.

¹⁶³ R. Tzvi Pesah Frank (1873-1960) served as chief rabbi of Jerusalem and was one of the founders of the chief rabbinate of Palestine.

¹⁶⁴ *TJ Berakhot* 6:1.

¹⁶⁵ According to R. Menahem Azariah of Fano (*Ma'amar haItim*), no benediction may be recited for a commandment received also by descendants of Noah.

¹⁶⁶ *Har Tzvi, Orach Hayyim II, Kuntres Mili deBerakhot, he'arah* to 2:1.

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R. Yitzhak Elhanan Spektor¹⁶⁷ believed that Nahmanides held Jewish law and Noahide law to be identical.¹⁶⁸ He writes:

*Kesef Mishneh*¹⁶⁹ wrote in the name of Nahmanides that the commandment of *dinim* means acting according to the laws of the Bible, etc. However, from what Maimonides has written, it seems that the main intent of the commandment of *dinim* includes the possibility of acting according to convention.

Rav Kook¹⁷⁰ writes¹⁷¹ that according to Maimonides, Noahide law is identical with Jewish law, while according to Nahmanides, it is based not on Jewish law but rather on rational deliberation:

However, it should be noted that for the descendants of Noah, a disqualification based upon common sense appraisal (*umdena*) takes on the force of a disqualification based on biblical law, according to the opinion of Nahmanides that Noahide law is a matter of rational deliberation and not based upon biblical legislation. One might, therefore, conclude that circumstantial evidence is adequate. But not all authorities concur, and Rema, in responsum no. 10, rules in accordance with Maimonides that, with the exception of clearly specified instances, Noahide law in all of its details is identical with the laws of the Bible.

¹⁶⁷ R. Yitzhak Elhanan Spektor (1817-1896) was one of the leading halakhic authorities of his generation. R. Spektor served as rabbi of a number of different cities in Russia and was widely acknowledged as the leader of Russian Jewry.

¹⁶⁸ *Nahal Yitzhak*, *Hoshen Mishpat* 91:1.

¹⁶⁹ *Kesef Mishneh*, *Melakhim* 9:14.

¹⁷⁰ On Rav Kook, see above, note 39.

¹⁷¹ *Resp. Ezrat Kohen* 22, pp. 60-61, s.v. *Omnam*.

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In his *Etz Hadar*,¹⁷² however, Rav Kook understands Maimonides and Nahmanides differently:

And even as regards the commandments they did receive, I have already written that the details of these commandments were not communicated to them. And this is certainly the case with regard to the commandment of *dinim* in which they were commanded simply to establish courts (as in *Sanhedrin* 56b, and as explained by Maimonides *Hilkhos Melakhim* 9:14). And although Nahmanides differed with Maimonides, holding that with regard to the specifics of their laws they are bound to judge after the fashion of the laws of Israel, it seems clear that his intention is to say that just as in the case of Israel, for whom the basis of the commandment of *dinim* is the obligation of every individual to obey the laws, so also for descendants of Noah, the obligation is for each individual to act in accordance with the law. For Maimonides, on the other hand, the commandment of *dinim* is only that of establishing courts. Thus, a Noahide may not be executed for failing to obey the law, since it is not one of the seven commandments. Hence, even according to Nahmanides, the particulars of Noahide law may certainly differ from those of Jewish law. The operative principle of Jewish law is the holiness of the Torah, while Noahide law is based upon the dictates of basic human honesty.¹⁷³

Basing himself on Nahmanides, R. Ya'akov of Lissa¹⁷⁴ co-

¹⁷² *Etz Hadar*, chp. 40, text to n. 11.

¹⁷³ See also *ibid.*, chp. 41, text to n. 13: "And that which Nahmanides writes, 'in the manner of the laws of Israel,' was not intended to mean identical laws."

¹⁷⁴ R. Ya'akov of Lissa (1760-1832) served as rabbi in Lissa (Leszno, Poland) and Kalisz. His writings have had significant influence upon the study methods used in *yeshivot* in recent generations.

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mes to the opposite conclusion. Attempting to prove that Noahide courts must also rule on the basis of a majority of judges and recognize *hazakah* (*praesumptio juris*),¹⁷⁵ he finds that Noahide and Jewish law are indeed identical:

In my humble opinion, the juridical principle of majority decision applies also to the descendants of Noah for both convictions and acquittals. This is part of the *dinim* that the descendants of Noah were commanded, as Nahmanides wrote. Consequently, majority rulings, perjury, and all other juridical principles are applicable. That a Noahide court, unlike a Jewish court, may impose capital punishment on the decision of one judge and the testimony of one witness is an exception, perhaps known by oral tradition or deduced from a particular verse.¹⁷⁶ With regard to all other judicial procedures, however, they are no different from Israel. Accordingly, it is self-evident that procedural matters, such as, majority ruling, recognition of *praesumptio juris*, and so forth, are as applicable to non-Jews as they are to Jews.¹⁷⁷

¹⁷⁵ *Nahalat Ya'akov* II, Responsa 3.

¹⁷⁶ See *Maharam Shik, Orah Hayyim* 144: "Perhaps he interprets the verse (Deut. 16:18), 'Judges and officers shall you make in all your gates...' to mean make them for yourself but not for the other nations, in other words, they do not need 'judges and officers'; one judge is sufficient."

¹⁷⁷ Regarding whether Noahides are bound by the opinion of the most learned of the judges (*rov hokhmah*) even against the majority, see *Mahaneh Hayyim* II, *Yoreh De'ah* 8, p. 31. As to whether possession creates presumption of ownership amongst Noahides, see *ibid.*, 6 and *Etz Hadar haShalem*, pp. 200-201. On whether a majority ruling is determinative for descendants of Noah, see *Peri Megadim, Yoreh De'ah, Sha'ar haTa'arovot* II, the third *hakirah*; *Resp. Noda biYehudah (mahadurah tinyana), Even haEzer* 42 (responsum of the author's son); *Resp. Hatam Sofer, Yoreh De'ah* 70, ad fin.; *Resp.*

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In *Zera haAretz*,¹⁷⁸ R. Yosef Tzvi Halevi¹⁷⁹ does not agree with Rav Kook:

A commandment not elaborated by the Sages is not a commandment. This is so for descendants of Noah as well as for Jews. Accordingly, the descendants of Noah are obliged to study the commandments, to clarify them for themselves, and to associate with Torah scholars.

Rabbi Yosef Tzvi Halevi bases himself on the passage in *Sanhedrin* (59a) in which R. Me'ir declares that with regard to the Noahide commandments, a descendant of Noah who studies Torah is considered to be as great as the High Priest:¹⁸⁰

Mahaneh Hayyim I:63, s.v. *veAidi*; *Resp. Maharam Shik, Orah Hayyim* 104. See also R. Zussman Eliezer Sofer (on R. Sofer, see note 200 below), *Sefer haMiknah* I, 8:2, p. 25b, who notes a contradiction in the opinion of *Hatam Sofer* on the question of majority rulings. As a result, R. Zussman Eliezer Sofer distinguishes between different types of majority: "And it is my opinion that, in truth, [reliance upon the] majority is a matter of logic, and principles whose source is logic do not need to be based upon Scripture, for there is a presumption that it is so." See also the addendum to the New York (1942) edition for further references. See also *Sedei Hemed, Gimel* 55:20, and *Pe'at haSadeh, Gimel* 6:3. In *Iggerot haRe'ayah* I:145, p. 183, Rav Kook discusses the definition of cooking and whether cooking by means of the hot springs of Tiberias (see *Pesahim* 41a) is included: "The principle, as I understand it, is that with regard to all matters, the Torah, like the rest of the world, follows the majority. And since in the majority of cases cooking is done by means of fire, the term cooking, when unqualified, means by fire. This is so with regard to Passover as well as the Sabbath and the Tabernacle, for we follow the majority of people."

¹⁷⁸ *Zera haAretz, Hilkhot Kila'im* (Jerusalem, 1941), p. 242.

¹⁷⁹ R. Yosef Tzvi haLevi (1874-1960) served for many years as head of the rabbinic court of Jaffa and Tel Aviv.

¹⁸⁰ *Zera haAretz*, op. cit. (note 178 above), p. 243.

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If we say that only the generalities of the commandments were given to the descendants of Noah and concerning the details they are to conduct themselves according to their own understanding, and that they need not study with Jewish scholars in order to address their queries to them, then what are we obliged to teach them, if they need to know no more than the names of the commandments and then interpret them according to their own understanding without inquiring of Jewish scholars?¹⁸¹

A novel description of the freedom of descendants of Noah to initiate legislation and thereby alter their obligations is offered by *Helkat Yo'av*.¹⁸² According to *Helkat Yo'av*, the principle that for Noahides, various civil offenses, such as theft and extortion, carry the death penalty applies only where they have not enacted legislation of their own to deter such violations. If, however, they have passed the relevant legislation, then the penalty for such offenses is no longer death, but rather the penalty prescribed by their own legislation. This is based on a kind of social contract in which the parties excuse each other in advance from the need to invoke capital punishment.¹⁸³

But in my opinion, within the rule that descendants of Noah are put to death for violation of their commandments, a distinction must be made. Regarding the area of social laws, such as, burglary and theft, although the penalty is death, this applies only when they have not

¹⁸¹ Regarding this, see also R. Me'ir Lerner (head of the rabbinic court of Altona), *Resp. Hadar haCarmel, Hoshen Mishpat* 2.

¹⁸² R. Yo'av Yehoshua Weingarten (1847-1922), was the leading student of the author of *Avnei Nezer*, R. Avraham of Sochaczew, and served as rabbi of a number of cities in Poland, the last one being Kinsk.

¹⁸³ *Helkat Yo'av (mahadurah tinyana)* 15.

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legislated their own rules and regulations. If, however, the regime has established how much a thief will be fined and what will be the fate of one who withholds wages, etc., there no longer exists an obligation to put violators to death. This is so, because the descendants of Noah are obligated to pass laws, and here they have enacted specific regulations concerning that which one man may not do to another, and what, in case of violation, the penalty will be. If so, it is as if they have excused each other in advance – as though they have declared that if the law is upheld and the penalty imposed, the wronged party excuses the violator, and thus the violator is not deserving of the death penalty. All of this applies exclusively to monetary matters. In the case of murder, however, they do not have the power to excuse one another, since “a man’s soul does not belong to him.”

A similar approach is adopted by R. Katri’el David Kaplan, who argues that even according to Rema’s opinion, that the laws of the non-Jews are the same as those of the Jews: “Once they have passed their own legislation, it is as though they have excused each other, as in the case cited by *Helkat Yo’av*....” Consequently, R. Kaplan rules that “in accordance with the law of the land, it is permitted for a Jewish accountant to assist the non-Jewish judge in a case concerning two non-Jews.”¹⁸⁴

¹⁸⁴ *Keter David* 18; This opinion is cited also in *Resp. Minhat Yitzhak* IV:52, *gimel*. See also *ibid.*, 51, *ad init.*, where it is suggested that in litigation, “between two non-Jews, where it is clear that the judges are attempting to rule fairly and have not been bribed, etc., it may be that by helping to issue an equitable ruling he is fulfilling a commandment, since non-Jews were also commanded concerning *dinim*.” See *Resp. Mishneh Halakhot* VII:255, on whether Jews are permitted to serve as advocates before non-Jewish courts.

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B. The Explicit Differences Between Noahide Law and Jewish Law

At this point, we may return to a number of matters on which Noahide and Jewish law are known to differ. As noted,¹⁸⁵ it is established in *Sanhedrin* (57b) that a descendant of Noah may be put to death on the ruling of a single judge, the testimony of one witness, and without forewarning. A number of aspects of this principle require further elucidation. First, can we conclude that since these differences between Jewish and Noahide law are spelled out in the *Talmud*, the two are identical in all other matters? In fact, such a conclusion does not necessarily follow, for even if Noahide law is different and Noahides are not required to act in accordance with Jewish law, it may be that they are not permitted to establish their own standards *in this particular area*. In other words, perhaps the *Talmud* wishes to assert that they are *not permitted to refrain* from imposing capital punishment when, for example, there exists testimony of one witness.

On the other hand, it may be that although three judges, two witnesses, and forewarning are not, as in the case of Jewish courts, *required*, there may be nothing to prevent descendants of Noah from imposing such standards. Thus, the passage in *Sanhedrin* establishes a minimum requirement of one judge, one witness, and so forth. A third possibility is that they may in fact impose capital punishment on the basis of even more lenient evidentiary standards, on the basis, for example, of circumstantial evidence only. The passage in *Sanhedrin* would then be only by way of example, illustrating that Noahides can enact any law they desire.

That the Noahide procedures of one judge, one witness,

¹⁸⁵ Text to note 67 above.

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etc. are not obligatory, but rather optional, is the view of R. Yosef Henkin,¹⁸⁶ who in his *Lev Ibra* holds that Noahide courts are permitted to demand two witnesses, and so forth:¹⁸⁷

That which the Sages declared concerning descendants of Noah, that there is no need of forewarning and that one witness and one judge are sufficient, is intended to mean that a duly appointed court has the *option* to adopt such procedures, but not that it is obligated to do so. And there are many biblical proofs of this. As with corporal punishment prescribed by rabbinic legislation, it is one of the matters given over to the discretion of the court.

The author of *Minhat Hinnukh*¹⁸⁸ discusses the question of a conviction based on circumstantial evidence:¹⁸⁹ On the one hand, since an accused may be punished on the evidence of witnesses who would be disqualified by a Jewish court (e.g., relatives), perhaps even circumstantial evidence is sufficient for a conviction. On the other hand, according to the view that the insufficiency of circumstantial evidence

¹⁸⁶ R. Yosef Henkin (1881-1973) was born and educated in Europe and served in the United States as rabbi, halakhic authority, and communal leader.

¹⁸⁷ *Lev Ibra* (New York, 1957), p. 125.

¹⁸⁸ R. Yosef Babad (1800-1875), author of *Minhat Hinnukh*, served as rabbi of Tarnopol, Galicia.

¹⁸⁹ *Minhat Hinnukh*, commandment 82. See also *Resp. Ezrat Kohen* 22 (text to note 171 above). See also *Or haHayyim*, Gen. 44:10: "Joseph claimed that [his brothers] were mistaken when they said [that the brother guilty of theft] must die, for the death penalty is not imposed unless a witness actually saw the accused take the stolen object. In this case, however, there was only circumstantial evidence, and [the offender] is punishable only according to the law of the land [and not on the basis of the Noahide prohibition of theft]."

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is a matter of common sense, its aim being to avoid erroneous convictions, the same prohibition should apply equally to Noahide courts. In other words, although the exclusion of circumstantial evidence was decreed explicitly with regard to Jewish courts alone, its basis is not biblical fiat but reason, as explained by Maimonides in *Sefer haMitzvot*.¹⁹⁰ Hence, it should apply to the descendants of Noah as well.

Me'iri¹⁹¹ holds that a descendant of Noah may *not* be punished on the testimony of one who would be disqualified under biblical law.¹⁹² The author of the *Sefer haHinnukh*,¹⁹³ however, believes¹⁹⁴ that a descendant of Noah is punishable on his own admission, and he may, therefore, be punishable on circumstantial evidence as well.

¹⁹⁰ Maimonides, *Sefer haMitzvot*, negative commandment 290: "By this prohibition, we are forbidden to carry out a sentence [in a capital case] on the basis of a strong presumption, even though it be nearly conclusive. Thus, if a man pursues his enemy with intent to kill him, and the pursued man takes refuge in a house, followed by the pursuer, and we enter after them and find the pursued man at his last gasp, and his enemy, the pursuer, standing over him with a knife in his hand, and both of them are blood-stained: the pursuer is not to be put to death by the court in the execution of justice, since there are no witnesses to testify that they have seen the murder committed. The True Law forbids putting the man to death, in His words (exalted be He): 'The innocent and righteous slay thou not: for I will not justify the wicked' (Ex. 23:7)."

¹⁹¹ R. Menahem haMe'iri (d. 1315) was one of the leading talmudic commentators of Provence.

¹⁹² *Beit haBehirah*, *Sanhedrin* 56b (ed. Avraham Sofer, p. 224). See also below, text to note 210.

¹⁹³ The author is unknown, but in his introduction refers to himself as a Levite from Barcelona. The work is generally attributed to R. Aharon haLevi of Barcelona, but this is probably incorrect.

¹⁹⁴ *Sefer haHinnukh* 26 and 192.

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In this context, *Sefer haHinnukh*¹⁹⁵ adds the phrase, “*umin hadomeh* (and the like).” Hence it is possible that he would accept punishment based on circumstantial evidence.¹⁹⁶

In *Resp. Mahaneh Hayyim*,¹⁹⁷ the author argues that a descendant of Noah may not be punished on circumstantial evidence; since capital punishment in all cases requires *testimony* of witnesses, other evidence is insufficient. Thus, he continues, the principle articulated by *Turei Zahav*,¹⁹⁸ that whenever testimony is not required, other forms of evidence are sufficient, is not applicable. This principle is applicable to cases, such as matters of ritual, that do not require actual testimony before a court of law.

The very status of testimony before a Noahide court also requires further clarification. Does the testimony of one witness function in the same way as that of two witnesses before a Jewish court? All things being equal, is a Noahide judge obliged to rule on the basis of testimony of one witness as a Jewish judge is obliged to rule on the basis of testimony of two witnesses? What happens if another witness or other witnesses offer contradictory testimony?¹⁹⁹ What would be the rule if he or they testify that the first witness has perjured himself?

R. Zussman Eliezer Sofer²⁰⁰ discusses²⁰¹ whether the death penalty may be imposed upon a Noahide suffering

¹⁹⁵ *Sefer haHinnukh* 192.

¹⁹⁶ See also *Torat haMelekh*, p. 281.

¹⁹⁷ *Resp. Mahaneh Hayyim* II, *Yoreh De'ah* 8, p. 28ff. See also R. Yehudah David Bleich, op. cit. (note 114 above), p. 201ff.

¹⁹⁸ R. David haLevi, *Turei Zahav*, *Yoreh De'ah* 98:2.

¹⁹⁹ See *Minhat Hinnukh*, 26:6.

²⁰⁰ R. Zussman Eliezer Sofer (1830-1903) was a Hungarian rabbi and head of a yeshivah.

²⁰¹ *Sefer haMiknah* I, 8:11.

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from a fatal disease (*terefah*) who is found guilty of murder. A Jewish murderer who is fatally ill may not, on technical grounds, be executed. In a Jewish court, witnesses immune, for whatever reason, to punishment for perjury may not give testimony. Where the accused is fatally ill, witnesses testifying against him are not punishable for perjury, because the penalty for perjury is the imposition of the sentence that the perjurers had intended to inflict upon the accused, and in Jewish law, one who *murders* someone who is fatally ill may not be put to death. Hence, one who “merely” testifies falsely against a fatally ill accused is certainly not liable to punishment. Even if there is no indication whatsoever of perjury, the simple fact of the witnesses’ immunity disqualifies their testimony *ab initio*.

R. Sofer’s initial conclusion is that, unlike a Jew, a fatally ill Noahide guilty of murder *may* be put to death. Since a descendant of Noah may be executed on the testimony of only one witness, the disqualifier of immunity to the punishment for perjury must not apply to witnesses who testify against him. The Jewish regulations concerning perjury are not a matter of common sense but rather a biblical decree (see next paragraph), and were it not for such decree, a fatally ill Jewish murderer would also be executed.

Having reached this conclusion, however, R. Sofer raises an objection. In Jewish law, judgments may be rendered only on the basis of two witnesses. Beyond this requirement, no distinction is made in the number of witnesses; two witnesses carry the same weight as a hundred. It is specifically at this point that the Jewish law of perjury parts company with pure common-sense reasoning, for it is only on the basis of a biblical decree that the testimony of a second set of contradictory witnesses, be they two against one hundred or one hundred against two, is believed and the

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testimony of both sets is dismissed. On the other hand, if in the case of a Noahide, one hundred witnesses were to contradict one witness, it would be perfectly logical to accept their testimony over that of the first witness. R. Sofer concludes that the matter requires further study.²⁰²

R. Me'ir Arik²⁰³ argues²⁰⁴ that according to Maimonides,²⁰⁵ a descendant of Noah may not be executed on his own admission of guilt. This is inferred from Maimonides' explanation of David's execution (II Sam. 1) of the lad who had killed King Saul. Maimonides does not justify David's action on the basis of the lad's being a Noahide, but rather on the ground that this was an emergency measure (*hora'at sha'ah*). Thus it follows that Maimonides would not impose the death penalty based on a Noahide's own admission. Maimonides' explanation²⁰⁶ of the inadmissibility of confession in capital cases supports R. Arik's conclusion:

Perhaps the defendant is seriously disturbed; perhaps he is one of those bitter souls who look forward to death, who impale themselves or throw themselves from rooftops; perhaps such an individual might well come and admit to things that he has not done, in order that he be put to death.

Why, wonders R. Me'ir Arik, does Maimonides not simply explain that every man is considered to be his own relative and as such unqualified to testify? It must be that Maimon-

²⁰² See also *Resp. Mahaneh Hayyim* II, *Yoreh De'ah* 8, pp. 29-30.

²⁰³ R. Me'ir Arik (1855-1926) was one of the most respected rabbinic authorities of Galicia in his generation.

²⁰⁴ *Hiddushei R. Me'ir Arik* on *Sefer haHinnukh* 192, cited in *Sefer haHashlamah leSefer haHinnukh*. See also *Resp. Kol Mevasser* II, 22:3.

²⁰⁵ *M.T.*, *Sanhedrin* 18:6.

²⁰⁶ *Ibid.*

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ides believes that the confession of a descendant of Noah is inadmissible in capital cases. This is why Maimonides is forced to offer a rational rather than a legal explanation.

R. Hayyim Sofer concurs in this conclusion.²⁰⁷ Citing the same passage from Maimonides, he asserts that although a descendant of Noah may be executed on the testimony of a relative, he may not be executed on the basis of his own confession, "And the same line of reasoning applies equally to descendants of Noah, and, therefore, they may not be put to death upon their own confession." This, then, is another instance of a regulation based upon reason applying to the descendants of Noah.²⁰⁸

²⁰⁷ *Resp. Mahaneh Hayyim II, Orach Hayyim 22.*

²⁰⁸ See also sources cited by R. Ze'ev Wolf Leiter in his comments on *Sefer haHinnukh* 26 (which appear in *Sefer haHashlamah leSefer haHinnukh*), and the sources cited in *Resp. Kol Mevasser II:42*, s.v. *Mah shekatav hagaon*, ad fin. See also *Resp. Berit Ya'akov* (Libshitz), *Orach Hayyim 20*. The author of *Hemdut Yisrael, Kuntres Ner Mitzvah*, p. 100b, (ot lamed gimel, ad fin.) argues that since suicide is not forbidden to the descendants of Noah, their own admission is sufficient. R. Sha'ul Yisraeli, *Amud haYemini* (Tel Aviv, 1966), pp. 195-196, also writes that suicide is not prohibited to the descendants of Noah. See also *Resp. Torat Mikha'el 55*, on the question of a Noahide's consent to be wounded. *Gilyonei haShas, Sanhedrin 57b*, s.v. *Ahiv*, argues against *Hakham Tzvi 84*, according to whom, on the admission of a Noahide to an act of bestiality, the animal is executed although the offender himself is not. The conclusion is that the opinion of *Hakham Tzvi* requires clarification, since the *Jerusalem Talmud* (*Kiddushin 1:1* [ed. Vilna, p. 1b]) rules that a descendant of Noah may be executed upon his own confession. According to R. Hayyim Sofer, *Resp. Mahaneh Hayyim II, Yoreh De'ah 8*, pp. 29-30, it may be that (unlike Jews) descendants of Noah are believed when their own testimony incriminates them. According to Rashi's comment (*Ketubot 18b*, s.v. *Ein adam mesim atzmo rasha*) that the inability of a Jew to incriminate himself is a consequence of the presumption of innocence (*hezkat kashrut*), if such presumption is con-

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In a similar vein, R. Menahem haMe'iri²⁰⁹ observes in *Beit haBehirah* on the tractate *Sanhedrin*:²¹⁰ "It appears to me that those disqualified by biblical legislation from testifying [are disqualified from testifying against a descendant of Noah as well]." In other words, a descendant of Noah may *not* be convicted upon the testimony of a convicted felon, since the testimony of those disqualified from testifying before a Jewish court (as is a felon) is inadmissible. This too, although nowhere explicitly stated, is a matter of common sense that applies to the descendants of Noah – the testimony of a convicted felon simply cannot be considered reliable.

An interesting question is raised by Hazon Ish:²¹¹ If a descendant of Noah observes the law relating to property rights and bloodshed, but does not observe the other Noahide commandments, is he disqualified from being a witness or judge? His view is that such an individual is not disqualified:

Their judgments are binding, and are considered to be observance of the Noahide command of *dinim*. And al-

tradicted, self-incrimination is effective even by Jews. See also A. Kirschenbaum, "haKelal 'Ein Adam Masim Atzmo Rasha' beHilkhot Benei Noah," *Dinei Yisrael*, II (1971), 71-82. Kirschenbaum adopts the view of R. Hayyim Sofer (basing himself on R. Zussman Eliezer Sofer, op. cit. [note 61 above] 8:10). However, it remains to be seen whether confession would be effective even where testimony is required, or only where it is not, such as in matters of ritual. See also *Hemdat Yisrael*, *Kuntres Ner Mitzvah*, p. 100a; and *Seridei Esh* II:104.

²⁰⁹ Concerning R. Menahem haMe'iri, see note 191 above.

²¹⁰ *Beit haBehirah*, *Sanhedrin* 56b (ed. Avraham Sofer, p. 224).

²¹¹ *Hazon Ish*, *Baba Kama* 10:15. See also *Hazon Ish*, *Hilkhot Gittin* 101:42, ad fin. (cited also in *Hazon Ish*, *Hoshen Mishpat*, *Likkutim* 2:2).

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though failure to observe all seven Noahide commandments is an indication of defective reasoning, and although reasoning is the fundamental criterion for Noahide rulings, neither judge nor witness is disqualified by this. Although most of them do not observe the other Noahide commandments, they take the laws of property rights, bloodshed, and false witness quite seriously, and, therefore, their judgments are binding. When the descendants of Noah testify before their own judges, and the latter rule on the basis of their own conventions, their judgment is binding.

According to this line of reasoning, today, when most descendants of Noah do not observe all seven commandments, they are not consequently disqualified, since they are nevertheless fastidious in legal matters. Indeed, the failure nowadays by contemporary Noahides to observe the rest of the commandments is a consequence of conformity to the majority, and not the result of a defect in the reasoning they are obliged to utilize in judgment.²¹²

²¹² Cf. Maimonides, *M.T., Edut* 12:1: "If two witnesses testify that a person committed a particular offense, but since that person was not forewarned, he is not punished with lashes, he is still disqualified from testifying. When does this apply? When he violated something that is well known among Jews to be forbidden, such as, swearing falsely or needlessly, committing a theft or burglary, or eating meat that had not been ritually slaughtered, etc. If, however, he is seen violating some precept of which he is probably ignorant [*shogeg*], he must be warned, and only [if he committed the violation] after such warning, is he disqualified.... The rule is that where it seems clear to the witnesses that his offense was intentional, although he was not warned, he is disqualified from testifying but not punished." See also *Ozen Aharon, ma'arekhet ayin, ot tet*, "Testimony disqualified by the [witness's] commission of an offense: if the offense is one which is widely violated, the testimony should not be disqualified, otherwise hardly anyone would be qualified to serve as witness...." See also

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The basic judicial qualifications, however, remain mandatory in all cases, according to Hazon Ish. An individual must have the qualifications of a judge and knowledge of Noahide law; otherwise, he may not serve as a Noahide judge.

A novel suggestion is advanced by R. Shelomoh Yehudah Tabak.²¹³ R. Tabak discusses²¹⁴ the meaning of, “I will require it,” the phrase in Genesis 9:5 from which it is inferred that a descendant of Noah may be executed on the testimony of one witness. Next, he refers to a passage in the tractate *Baba Metzia* (28b) in which a similar phrase is explained as implying the need to investigate the credibility of an individual making a declaration regarding lost property. On this basis, R. Tabak concludes that the court must establish the credibility of the witness testifying against a Noahide in a capital case:²¹⁵ a second witness must establish the credibility of the first. In support, he argues that if one witness were believed in every case, no one would have any “breathing space.” That is to say that anyone could have an enemy executed by simply testifying against him. R. Tabak goes on to raise the possibility that the testimony of one witness is sufficient for conviction

Zerah Warhaftig, ed., *Osef Piskei Din shel haRabbanut haRashit leEretz Yisrael* (Jerusalem, 1950), pp. 137-138, concerning the status of testimony of one who violates the Sabbath in our time: those guilty of violations between man and God are, in practice, considered unintentional violators (*shogegim*), thus if they are otherwise trustworthy, their testimony is accepted. See sources cited there. See also R. Sha’ul Yisraeli, “biFsulei Edut Biglal Aveirah,” *Barka’i*, II (1985), 91-97.

²¹³ R. Shelomoh Yehudah Tabak (1832-1908) was head of the rabbinic court of Sighet.

²¹⁴ *Erekh Shai*, *Sanhedrin* 57b. See text to note 70 above.

²¹⁵ See Appendix I.

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only when the judge himself has also witnessed the crime.²¹⁶ "But when the judge himself did not witness the

²¹⁶ *Resp. Hakham Tzvi* 84, rules that a Noahide judge may preside in the trial of a defendant accused of an act which the judge himself has witnessed. The ruling is based upon the presumption that the judge's own experience is a more reliable source of information than testimony ("hearing cannot take precedence over seeing"). *Hazon Ish, Nezikin, Likkutim* 2:2, however, reaches the opposite conclusion: "It is most likely that a witness may not act as judge, and that we do not apply the principle 'hearing is not given precedence over seeing.'" R. Me'ir Dan Plotzki takes the position that a Noahide witness may act as judge: No judge could be expected to accept a claim of perjury against himself, and in Jewish law, testimony immune to prosecution for perjury may not be accepted (see the first *Tosafot* on *Baba Kama* 90b, s.v. *Kegon shera'uha balailah*; see also text between references 201 and 202 above). Among Noahides, however, since there is no requirement that testimony not be immune to prosecution for perjury, a Noahide witness may indeed act as judge. See also *Resp. Mahaneh Hayyim* II, *Orah Hayyim* 23. The author rejects an argument that the principle, hearing cannot be given precedence over seeing, is a matter of rational deduction and that the Jewish prohibition of a witness acting as judge is scriptural (the implication being that for descendants of Noah a witness may act as judge). "There the case is one of many people (at least three).... To apply the principle, hearing does not take precedence over seeing, in such a way that a lone witness may become the single presiding judge, is impossible, for if it were possible, you would leave no one any breathing space. Men would swallow each other alive, as the prophet said, 'And makes men as the fishes of the sea....' (Habakkuk 1:14), the larger ones devouring the smaller. If there is a need for judge and witness, then two are required, for with two there is less likelihood that the two will conspire to lie, pervert justice, and shed innocent blood...." In other words, if a number of judges witness a crime, it is possible to apply the principle hearing is not to be given precedence over seeing, and these judges may act as both witnesses and judges (see *Resp. Mahaneh Hayyim*, loc. cit., s.v. *uLefi mah shekatuv lemalah*). See also, *ibid.*, s.v. *veHinei*, where it is observed that the author of *Yedei Moshe* seems to hold that a witness may become a judge but that he

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crime, it may well be that the testimony of one witness is insufficient, for otherwise, men would 'devour each other alive.'" Here again, we see how common sense reasoning sets the constraints of Noahide judicial procedure.

A number of modern authorities have raised a new question: Must a Noahide judge have some official appointment in order to be permitted to administer punishment, or could any descendant of Noah take it upon himself to "judge" an offender and punish him? Since in Noahide law, one judge is sufficient, perhaps anyone may be a judge? Some authorities have gone even further, suggesting that if anyone may act as judge, perhaps an offender may judge himself based upon his own confession.²¹⁷

apparently had a variant text of the *Midrash Rabbah*.
²¹⁷ See *Melo haRo'im, ma'arekhet Ben Noah* 4. See also *Gilyonei haShas, Avodah Zarah* 64b on *Tosafot*, ad loc., s.v. *Eizehu*: "According to *Resp. Hakham Tzvi* 84: 'A descendant of Noah who sees a fellow descendant of Noah violating one of the seven commandments for which the punishment is death, is permitted to kill him, for he is both witness and judge, etc.' But it seems that this neglects to take the *Tosafot* in *Avodah Zarah* into account. And if these words of *Hakham Tzvi* were correct, then in combination with the words of the *Jerusalem Talmud, Kiddushin* 1:1, to the effect that a descendant of Noah may be executed upon his own confession, we would arrive at the novel conclusion that a descendant of Noah who has violated one of the seven commandments, even in the complete absence of witnesses, would be permitted and obliged to kill himself, since here too, we would say, that he is both witness and judge. For when *Hakham Tzvi* writes that it is permitted [for the same individual to act as witness and judge] the meaning is not only that it is permitted but that it is obligatory for the witness to kill the offender under the commandment of *dinim*." See also *Minhat Hinnukh* 34, ad fin., *Resp. Mishneh Halakhot* VII:116, 255.

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In his responsa, *Mahaneh Hayyim*, R. Hayyim Sofer²¹⁸ rules that²¹⁹

only one who bears the title, "judge," is competent to judge according to Noahide law; a layman is not permitted to impose the death penalty upon another Noahide, for who appointed him "a ruler and a judge"?²²⁰ There are, after all, judges in this world.

In the case of a thief who has gone untried, all those who witnessed the crime are obliged [to try him]. This is what Moses did when he saw that there was no judge, as is written, "And he looked this way and that, and when he saw that there was no man [meaning judge], he executed the Egyptian on his own authority" (Ex. 2:12). For Moses, as a member of the tribe of Levi, possessed judicial authority, since the Levites were the teachers of the law when the people were in Egypt.... However, if there are judges, then a descendant of Noah who has committed a violation, must be judged only by a [qualified] judge.

In subsequent comments,²²¹ R. Sofer rules that a judge must be officially appointed and capable of judging in accordance with the rules of sentencing that R. Sofer sets forth: "Not just anyone who wishes to call himself judge is permitted to sit in judgment of the descendants of Noah."²²²

²¹⁸ R. Hayyim Sofer (1821-1886) was a student of Hatam Sofer and one of the leading rabbis of Hungary.

²¹⁹ *Resp. Mahaneh Hayyim* II, *Orah Hayyim* 22, p. 62.

²²⁰ The wording here is based on Exodus 2:14: "Who made you a ruler and judge over us...?"

²²¹ *Resp. Mahaneh Hayyim*, *ibid.*, 23.

²²² *Ibid.*, p. 68. See also R. Yitzhak Isaac Liebes, "Al Devar Onesh Mavet leRotzheim," *Noam*, XXI (1979), 124 (also published with his responsa, *Beit Avi* III:161, p. 280), who argues that a descendant of Noah who is not a professional judge is not obliged to administer

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He continues²²³ to refute the claim of his questioner that one who sees a violation may act as both witness and judge:

And I say that judgment is the Lord's, and that had God not commanded the descendants of Noah to establish a court system, a Noahide who executed another for violation of Noahide law would himself be considered a murderer. Does he stand in God's stead? Unlike Jews, Noahides do not bear that kind of responsibility for one another, and if his neighbor has sinned, it is not his affair. Is not God capable of punishing evildoers? However, God did give the commandment of *dinim* to the descendants of Noah, to choose judges to try all those within their jurisdiction. Thus it is enough that a descendant of Noah may be executed upon the testimony of one witness and the decision of one judge. To say that the witness could be the judge and thus execute his neighbor, would be beyond all reason.

punishment, that it may be forbidden for him to act as judge, and that the obligation of appointing judges devolves upon the community and not upon the individual. Thus, he explains, the passage from the *Jerusalem Talmud* cited by Nahmanides does not constitute an argument against the opinion of Maimonides. In this approach, R. Liebes was preceded by *Resp. Yad Eliyahu* (of Lublin) 38 (see below, note 250); see, however, the commentary of R. Yeruham Fishel Perla on *Sefer haMitzvot* of R. Saadiah Gaon, *Onesh* 68-69 (vol. III, p. 91a), where the law of one who is zealous for God and permitted to kill without the decision of a court, is compared to the law of the Noahides regarding one witness and one judge: "And so, the zealot himself is both witness and judge, and the commandment is incumbent upon him, as in the case of Phineas (Num. 25)." See also *Resp. Mishneh Halakhot* IX:315, 355, 357. See also text to note 249 below.

²²³ *Resp. Mahaneh Hayyim*, *ibid.*, 23.

Chapter Six

JURISDICTION OVER JEWS

In light of the Noahide obligation to maintain a court system, we may ask whether their jurisdiction extends to Jews as well. The matter is discussed in the *She'iltot of Rav Ahai Gaon*, where it is established that non-Jewish courts have no jurisdiction over Jews, since the latter are commanded to maintain their own court system and are forbidden to resort to non-Jewish courts.

R. Ahai Gaon²²⁴ opens his consideration of this issue with a discussion of the basic obligation of bringing disputes before a court of law rather than solving them by force,²²⁵ and asserts that this obligation dates back to Adam himself;²²⁶

²²⁴ R. Ahai Gaon of Shabha (d. 752 or 762 CE) was one of the scholars of the Academy of Pumpedita in Babylonia.

²²⁵ See Nahum Rakover, *Shilton haHok*, Section 4, "Alim baHalikh haShipputi," ch. 1, "Mavo," pp. 107-108.

²²⁶ *She'iltot of R. Ahai Gaon*, *She'ilta* no. 2.

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Where a man has a dispute with another, he is forbidden to use force against the other; he must, rather, go before a judge who will decide according to biblical law. And the litigants must accept the ruling, since the world exists on the basis of truth, as we have learned, “Rabban Shimon ben Gamliel said, ‘Upon three fundamentals does the world exist: justice, truth, and peace.’”²²⁷ And when God created Adam, He commanded him concerning law, as is written, “And the Lord God commanded Adam saying” (Gen. 2:16). And R. Yohanan said, “‘Commanded,’ This refers to *dinim*,²²⁸ as is written [regarding Abraham], ‘For I have known him to the end that he may command his children and his household...’ (Gen. 18:19). Just as ‘command’ in the second verse refers to *dinim*, so does ‘command’ in the first verse.”

R. Ahai Gaon adds that

while non-Jews are commanded to establish a court system, this refers only to jurisdiction over themselves. And even if they judge on the basis of Jewish law, Jews are forbidden to resort to their courts, as we have learned [in a *baraita*], “R. Me’ir said, ‘Wherever you find non-Jewish courts, though they judge according to Jewish law, you are not permitted to resort to them.’”

How is this principle – the prohibition against Jews’ resorting to non-Jewish tribunals – to be reconciled with the principle, “the law of the land is binding,” discussed above? If the obligation of non-Jews to establish a court system is biblical, then it would appear that the corollary, the obliga-

²²⁷ *Avot* 1:18.

²²⁸ In the *She’iltot* (ed. Mirsky, Jerusalem, 1960), the editor points out that the text of two manuscripts reads *dayyanim* (judges) and that it is probable that this was the reading available to Maimonides (see text to note 239 below).

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tion to obey the court, is binding upon Jews as well. If so, even though Jews too are commanded to establish their own court system and laws, perhaps the specific regulations of the Jews are to be suspended in favor of those of the non-Jewish state.²²⁹

One aspect of this question is taken up by Rashbatz²³⁰ in his well known responsum concerning the appointment of Rivash as a state judge.²³¹ Rashbatz discusses the legitimacy of the royal appointment of a Jew as judge of a Jewish court and concludes that it is not recognized by Jewish law although the law of the land is binding. This is so for a number of reasons. First, the law of the king applies only to customary state practice:

It is known that it is not the customary practice of this nation to appoint a special judge to adjudicate disputes between Jews. And since this has not been their practice, and is not among the laws of the state, if the king wishes to institute this from this day on, his decree is not binding.

²²⁹ *Or Zaru'a*, *Hilkhot Erka'ot*, holds that when both litigants agree to resort to a non-Jewish judge and he judges them according to Jewish law, the verdict is binding, although *ab initio* it is forbidden to resort to a non-Jewish judge: "Since non-Jewish judges are [recognized] judges, as our Rabbis have taught, in the seventh chapter of *Sanhedrin*, 'The descendants of Noah received seven commandments: *dinim*, the prohibition of blasphemy, etc.,' once rendered, the verdict is binding." In support of his view, *Or Zaru'a* cites *Gittin* 10b and Rashi, *Gittin* 9b, s.v. *Hutz migittei nashim* (see text to note 82 above). Regarding the force of a commitment to litigate before non-Jewish courts, see E. Shochetman's *Ma'aseh haBa beAveirah* (Jerusalem, 1981), p. 183.

²³⁰ R. Shimon son of R. Tzemah Duran (1361-1444) was born in Spain and served as rabbi of Algiers.

²³¹ *Resp. Tashbetz* I:158-162; See also, S. Shiloh, *Dina deMalkhuta Dina* (Jerusalem, 1975), pp. 422-423.

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Rashbatz's second argument introduces a radically new conception. Rashbatz argues that even the king's appointment of judges for the general population is not part of the law of the state but rather a function of religion, and thus "the law of the land is binding," is not applicable.

How Rashbatz arrives at his conclusions requires some clarification. His reasoning employs a negative proof:

If it were a matter of state law, the result would be the nullification of the totality of Jewish law, for kings everywhere appoint judges... to judge according to their laws. Were it to have the force of "the law of the land is binding," the result would be that all Jewish law would be nullified. Thus, we are forced to conclude that the appointment of judges to decide according to their laws is not a function of the law of the state but rather of their religion. And Rashba reaches the same conclusion in one of his responsa.

Rashbatz bases himself upon the well known responsum of Rashba²³² on a question of inheritance,²³³ wherein a father, upon the death of his married daughter, demanded of the widower the return of the dowry given by the father to his daughter (i.e., the widower's deceased wife). Although in Jewish law a husband inherits his wife, the father here argued "that there is no need to take the husband's right of inheritance into consideration, since everyone knows that such matters are decided according to the laws of the non-Jews." Rashba, for his part, vehemently rejects the father's recourse to "the law of the land is binding," countering:

²³² R. Shelomoh son of Adret (1235-1310) was a student of R. Yonah Gerondi and Nahmanides. He was a leading rabbi of the Spanish school.

²³³ *Resp. Rashba* VI:254.

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If we were to accept this argument, we would nullify the first-born son's right of inheritance and uproot all of Jewish law. What need would we have for the holy books written for us by Rabbi [editor of the *Mishnah*] and Ravina and Rav Ashi [editors of the *Talmud*]? Jews could simply teach their children the laws of the non-Jews and build altars in the non-Jewish houses of prayer. God forbid that such a thing should ever happen to the Jewish people, God forbid. The Torah itself would have to wear sackcloth!

Chapter Seven

JURISDICTION OVER NON-JEWS

Are Jews obligated to enforce the observance of the Noahide obligation of *dinim*? Such association might bear on the appointment of judges for non-Jews, sanctions against non-Jews for failure to appoint judges, and punishment of non-Jews for violations of Noahide law.

Maimonides rules clearly²³⁴ that an obligation does exist to appoint judges for resident aliens (*ger toshav*)

to judge them according to [Noahide] laws, in order that the world not be destroyed. And the court is permitted to decide for itself whether to appoint Jewish or non-Jewish judges.²³⁵

²³⁴ *M.T.*, *Melakhim* 10:11.

²³⁵ See also *ibid.*, 8:10: “And so on God’s authority, Moses commanded all inhabitants of the earth to accept the commandments given to the descendants of Noah.” Here, however, Maimonides is not discussing performance of the commandments, but rather their acceptance (as

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Maharam Shik, one of the Later Authorities, concludes that there exists an obligation for Jewish courts to judge non-Jews for their violations. He reasons that with regard to the punishment of transgressors it is impossible to draw

binding). Nor does Maimonides say here that Jewish courts are obliged to judge descendants of Noah. According to *Torah Shelemah, Millu'im* to vol. XVII, p. 220, this regulation is for the messianic era. See also R. Sha'ul Yisraeli, *Amud haYemini* 12, 1:12. See also Maimonides, *M.T., Milah* 1:6, "One who acquired an adult slave from a non-Jew, if the slave did not wish to be circumcised, one may wait up to twelve months...; and if it was stipulated with the slave's original owner at the time of purchase that the slave would not be circumcised, then it is permissible to keep him, though he be uncircumcised, on condition that he accept the seven Noahide commandments; and he will be as a resident alien (*ger toshav*). If, however, he does not accept the seven commandments, he is to be immediately executed." According to *Hasagot haRavad*, ad loc., "he is to be immediately sold, today we may not kill anyone." See also *Kesef Mishneh, Or Same'ah, Tzofenat Pane'ah*, and *Yad Peshutah*, ad loc. See also R. Yehudah David Bleich, op. cit. (note 114 above), p. 196, for explanation of the remarks of *Tzofenat Pane'ah*. See also B. Na'or, ed., *Hasagot haRavad leMishneh Torah*, (Jerusalem, 1985), *Hilkhot Milah*, loc. cit. R. Aaron Soloveitchik, "be'Inyan Benei Noah," *Beit Yitzhak*, 19, (1987), p. 335, explains that Maimonides and *Ravad* disagree whether Noahide law is similar to the Jewish rule that punishment may not be administered unless the Temple is standing and sacrifices offered. R. Soloveitchik adds that it is possible that even Maimonides holds that punishment may not be administered to descendants of Noah until then, but that the execution of the slave is not a punishment but rather a method of coercing him to keep the commandments (the method being the *threat* of execution, which is, of course, meaningless unless it may be carried out). Such coercion is permissible in the absence of the Temple and sacrifices. Accordingly, in the opinion of *Ravad*, no one is to be coerced into observing the seven Noahide commandments. See also comments of the Lubavitcher Rebbe on the seven Noahide commandments, cited above, text to note 102.

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distinctions, and that if non-Jewish violators are not punished, Jews may ultimately suffer:²³⁶

In any case, it appears to me that anything that involves dealing with transgressors, even if they are descendants of Noah, is our concern, for others will learn from any evil done in public and follow suit, and in the very least, the sight of the commission of evil is harmful to the soul. Thus, in trying them, we are protecting ourselves. In any case, it is inconceivable that any person living among the residents of a given city be beyond the jurisdiction of the court.

This may well be the intent of Maimonides in the passage just cited when he explains the obligation to appoint judges with the words, “that the world not be destroyed.”²³⁷

With regard to descendants of Noah who are not resident aliens, Maimonides’ definition²³⁸ of *dinim* requires some clarification:

What is meant by the commandment of *dinim*? That [Noahides] are obliged to appoint *dayyanim* and *shofetim*²³⁹ in every district²⁴⁰ to adjudicate matters con-

²³⁶ Resp. Maharam Shik, Orah Hayyim 144.

²³⁷ R. Yehudah David Bleich, “Hasgarat Poshe’a Yehudi, sheBarah leEretz Yisrael,” *Or haMizrah*, XXXV:3-4 (1987), 262, suggests that appointing judges for descendants of Noah in order that the world not be destroyed is a matter of reason.

²³⁸ M.T., *Melakhim* 9:14.

²³⁹ See also *Genesis Rabbah* 16:6: “Elohim [i.e., “God” in Gen. 2:16] means judges.” For parallels see J. Theodore and Ch. Albeck, op. cit. (note 1 above), ad loc. It should be noted that Rashi *Sanhedrin* 56b, s.v. *I hakhi mai hosifu aleihen dinin*, writes, “These are not laws, but rather the commandment of [appointing] judges.” Rashi seems to distinguish between *dinim* (laws) and *dayyanim* (judges). If this inference concerning Rashi is correct, then Rashi differs with Maimonides, who defined the commandment of *dinim* as the commandment of

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cerned with the other six [Noahide] commandments and to caution the people.²⁴¹ And a descendant of Noah who violates any of these seven commandments, is put to death by the sword. This is why the residents of Shekhem [see Gen. 34] were deserving of death, for

judges. *Avi Ezri, Hilkhos Melakhim* 9:14, suggests the novel approach that to Maimonides the commandment is not to appoint judges but rather to judge the accused.

²⁴⁰ See above, *Tosefta Avodah Zarah* 9:4, text to note 7. Rashi to *Sanhedrin* 56b, s.v. *Kakh nitzavu akum*, points out “that *mishpat* (justice) is written there [in Gen. 18:19, ‘...that they may keep the way of the Lord, to do righteousness and justice...,’ as we have seen, one of the biblical sources for *dinim*], and here too, ‘...and they shall judge the people with righteous judgment [*mishpat*]’ (Deut. 16:18) [thus, although the meaning of the word *mishpat* is somewhat different in each of these contexts, by word analogy to Deuteronomy, the verse in Genesis is taken to refer to the establishment of courts].”

²⁴¹ *Resp. Mahaneh Hayyim* II. *Orah Hayyim* 22, p. 62, explains “caution the people” as follows: “That they know what God asks of them, that they know the penalty for each offense, and different aspects [of the offense], that which is included in the commandments and their respective warnings; to know that for a particular offense the punishment is death at the hands of heaven and for another death at the hands of the court, that a minor with understanding may be put to death before the age of twelve [according to the opinion of *Hatam Sofer*; see above], and so forth. In this way, there is someone from whom to learn the laws, and when a Noahide does not learn them and believes a particular act to be permitted, he will still be liable to the death penalty.” According to *Hemdat Yisrael, Kuntres Ner Mitzvah*, p. 99, the aim of cautioning the people is to prevent violations. Rav A. Soloveitchik, op. cit. (note 235 above), avers that the obligation of promulgation is part and parcel of the commandment of *dinim*. R. Soloveitchik adds that the judges are not obliged to impose the death penalty unless circumstances require it as a deterrent. Thus, according to Maimonides, Jacob was angry with his sons over the massacre of the town of Shekhem (Gen. 34) because there was no immediate need to impose the maximum sentence as a deterrent.

Jurisdiction Over Non-Jews

Shekhem had been guilty of robbery, and they witnessed the incident and did bring him to justice.²⁴²

What is meant by “obliged to appoint *dayyanim* and *shofetim*”? Why does Maimonides use both terms when elsewhere,²⁴³ with reference to Deuteronomy 16:18, he notes that their meaning is identical?

It is a positive biblical commandment to appoint judges [*shofetim*] and officers in every country and every district, as is written (Deut. 16:18), “Judges and officers shall you appoint in all your gates.” *Shofetim*, these are the permanent *dayyanim* of the court, before whom litigants appear.

Also, what does “put to death by the sword” mean? Is a Jewish court obliged to administer punishment? Or is it optional, the *obligation* to administer punishment devolving only upon the descendants of Noah themselves?

Nahmanides²⁴⁴ understands Maimonides to mean that Jewish courts are obliged to try descendants of Noah. Regarding the incident of Shekhem (Gen. 34), he writes,²⁴⁵ “Many have asked how the righteous sons of Jacob could spill innocent blood.” In response, he cites the passage from Maimonides quoted above but expresses reservations, “In my opinion, this is not correct, for if it were, Jacob himself

²⁴² See *Hizkuni*, Gen. 34:25. See also the Commentary of the *Tosafot* (ed. Gelis) on Gen. 34:13, “And it may be said that [the sons of Jacob] were justified in killing [the residents of Shekhem], for the latter were descendants of Noah and, as such, were commanded concerning theft..., and even the others [not directly involved in the crime] failed to protest as they should have.”

²⁴³ *M.T.*, *Hilkhot Sanhedrin* 1:1. See also the suggestion of R. Yehudah David Bleich, *op. cit.* (note 114 above), n. 18.

²⁴⁴ Concerning Nahmanides, see note 50 above.

²⁴⁵ Nahmanides, Gen. 34:13 (*Parashat Vayishlah*).

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would have preceded them in discharging this obligation.” Thus, he understands Maimonides to mean that the sons of Jacob were *obliged* to punish the residents of Shekhem.²⁴⁶ Nahmanides has his own view on the matter and disagrees with Maimonides on a number of points. First:

Dinim, listed as one of the seven Noahide commandments is not simply the obligation of appointing judges.... Rather, it includes such matters as theft and fraud..., and as part of this commandment, they were commanded to appoint judges in every city, as were Jews.²⁴⁷

Second: “And if they do not do this, they are not to be put to death, since this is a positive commandment, and positive commandments which go unfulfilled are not subject to the death penalty.”²⁴⁸

²⁴⁶ See also *Sefer haHinnukh* 192 (ed. Chavel, 191), according to which Jews are obligated to punish descendants of Noah who have violated their commandments: “...whenever they are under our jurisdiction, we must judge them for violation of their commandments.” See also *Resp. Mishneh Halakhot*, VII:255 and IX:396 (the reference there to *Sefer haHinnukh* as commandment 26 is mistaken and should be corrected to 192). On whether Jews are obligated to enforce the observance of the Noahide commandments, see also *Sefer haMiknah* I, 8:5; and R. Avraham Eliahu Kaplan, *Divrei Talmud* I:8, p. 282; see also note 241 above, ad fin. See also R. Yehudah Gershuni, “Onsham Shei Mehablim ha’Aravi’im le’Or haHalakhah,” *Kol Tzofa’yikh* (Jerusalem, 1980), pp. 226-231; also *ibid.*, pp. 232-234, concerning whether Jewish courts are obliged to judge descendants of Noah; *Resp. Meshiv Milhamah* I:1, p. 27; and R. Yo’ezer Ariel, “Ha’anashat Nokhrim,” *Tehumin*, V (1984), 350-363.

²⁴⁷ *Lehem Mishneh*, *Melakhim* 9:14, shows how the discussion in *Sanhedrin* 56b supports the opinion of Nahmanides. On this point, see also R. Eliahu Barukh Shulman, “Mitzvat Dinim beVen Noah,” *Barkai* II (1985), 166-168.

²⁴⁸ See the objection of R. Eliahu of Lublin (Rabbi in Brest-Litovsk and

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Moreover, Nahmanides continues, it is necessary to distinguish between the obligation to appoint judges and the obligation of the judge to try a particular case. Even where a Jewish judge would be obligated to try a case, a Noahide judge is permitted to abstain. In this assertion, Nahmanides bases himself upon a statement in the *Jerusalem Talmud*:²⁴⁹

In Jewish law, you are not permitted to withdraw from a case on which you are competent and capable [after hearing the claims and evidence] of ruling; only when [after hearing the claims and evidence] you are *incapable* of ruling, may you withdraw. In Noahide law, you may withdraw even when capable of ruling.

Thus, concludes Nahmanides,

It appears that a non-Jewish judge is permitted to say to litigants, "I will not hear your case." The obligation of a Jewish judge to rule wherever capable is an additional obligation based upon the verse, "...you shall not be afraid of the face of any man..." (Deut. 1:17), interpreted in the *Talmud* as, "Do not withhold your words from any man."²⁵⁰ [If a non-Jewish judge is permitted

Eyebeschuetz, emigrated to the Holy Land at the end of his life), in *Resp. Yad Eliahu* (Amsterdam, 1780), 38, based upon the regulation that a non-Jew who keeps the Sabbath (a positive commandment) is guilty of a capital offense. Furthermore, the *Talmud* explains that *dinim* has a positive aspect, the act of judgment, and a negative aspect, refraining from doing injustice (See Rashi's formulation, *Sanhedrin* 59a, s.v. *uMeshani kum aseh*; concerning this passage in Rashi, see Avi Ezri, *Hilkhot Melakhim* 9:14).

²⁴⁹ This passage does not appear in our text of the *Jerusalem Talmud*. See note 222 above.

²⁵⁰ *Resp. Yad Eliyahu*, loc. cit., explains that either the *Jerusalem Talmud* is referring to a Jew judging a non-Jew, or the *Jerusalem Talmud* holds that Noahides are commanded to establish courts in every city and every district, though no obligation devolves upon the individual,

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to refuse to hear a case, a non-Jewish citizen] certainly is not to be put to death for refusing to act as policeman, officer, or judge of his overlord [as did the citizens of Shekhem refuse to judge the son of their ruler].²⁵¹

Hence, not only was the failure of the people Shekhem (the city) to try Shekhem (the individual) not a capital crime, it was not a violation of any kind. Moreover, with regard to capital crimes, such as idolatry and sexual offenses, which the residents of Shekhem may have committed previously, Nahmanides asserts that “it was not within the jurisdiction of the sons of Jacob to judge them.”

Nahmanides’ own explanation of the Shekhem incident sheds light on his opinion regarding the possible obligation of Jews to judge Noahides:

Since the people of Shekhem were extremely evil..., the sons of Jacob wished to avenge themselves by the sword. Thus they killed the king and all inhabitants of his city, since they were his servants and accepted his will.... And Jacob told his sons that they had brought danger upon him, as is written (Gen. 34:30), “You have troubled me to make me odious...,” and subsequently cursed their anger (Gen. 49:5-7) for having done violence to the residents of the city..., shedding their blood unnecessarily, for the residents of Shekhem had done them no evil.²⁵²

whereas for Jews, an individual obligation does exist.

²⁵¹ See Appendix II.

²⁵² See Nahmanides, Gen. 49:5 (although his remarks are not entirely clear). *Minhat Hinnukh* 415, argues that according to Nahmanides, the Noahide commandment of *dinim* is comparable to that given to Jews, and, therefore, the commandment, “...you shall not be afraid of the face of any man...” should apply to descendants of Noah as well. *Minhat Hinnukh* makes no mention of Nahmanides’ comments on Gen. 34:13.

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According to Nahmanides, then, as long as descendants of Noah do no evil to Jews, Jews are not to punish them.

Hatam Sofer,²⁵³ claims that, in fact, Nahmanides and Maimonides do not disagree on the question of whether the descendants of Noah were commanded concerning money matters, but whether they were so commanded as part of the obligation of *dinim* or as part of the prohibition of theft which included not only theft *per se* but every form of illegal appropriation of property.²⁵⁴ Concerning the view of Nahmanides that descendants of Noah are not to be put to death for failure to perform a positive commandment (i.e., *dinim*), *Hatam Sofer* argues that although they may not be executed by a court of law, they are nonetheless *deserving* of death:

Since there existed no obligation for a court of law to execute them, Jacob was angered that his sons had exposed themselves to danger over an obligation that did not devolve upon them. This completely answers Nahmanides' objections [to the approach of Maimonides].

From the Noahide obligation of *dinim*, *Hatam Sofer* concludes that it is forbidden to bribe a Noahide judge; doing so causes an injustice to the opposing litigant and also violates the principle (Lev. 19:14), "Do not place a stumbling block before the blind [which forbids becoming an accomplice to any sort of transgression]," by bringing the judge

²⁵³ *Resp. Hatam Sofer* VI:14. Concerning *Hatam Sofer*, see above, note 142.

²⁵⁴ *Hemdut Yisrael, Kuntres Ner Mitzvah*, p. 99b, indicates the practical implications of this disagreement.

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who receives the bribe to pervert justice, thereby violating his obligation of *dinim*.²⁵⁵

²⁵⁵ Regarding bribery of a non-Jewish judge, see *Resp. Havvot Ya'ir* 136, where the respondent's brother-in-law, the rabbi of Mannheim, answered "the great duke": "Even if not forbidden by the Bible, it is proper to prohibit it on rational grounds in the interest of good public order, in the same way as murder, theft, fraud, sexual immorality, and fraudulent weights and measures are proscribed. All of these are dictated by reason and all legal systems relate to them, for if law becomes corrupted, anarchy will prevail." The definition of bribery in this responsum requires careful study. See *Resp. Sho'el u'Meshiv (mahadurah kama)* 1:230, concerning the apparent contradiction between the *Jerusalem Talmud* on the prohibition of bribery, cited by Nahmanides, and Rashi's comments on the verse (Deut. 1:9), "...I am not able to bear you myself alone," from which it appears that there is no prohibition of perverting justice among descendants of Noah. The author's opinion is that for descendants of Noah there is no prohibition against accepting bribes, but only against perverting judgment as a result. See also *Hemdut Yisrael*, *ibid.* and subsection 32, p. 100a (where it is suggested that perhaps among descendants of Noah, relatives may testify only *against* an accused). See also *Sedei Hemed*, *ma'arekhet vav*, 26:31; *Pit'hei Teshuvah*, *Hoshen Mishpat* 9:3; *Halakhah Pesukah* II (Jerusalem, 1987), *Hoshen Mishpat* 9, p. 4, n. 38 and p. 5, nn. 68, 71.

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NON-JEWISH LITIGANTS IN JEWISH COURTS

Whether Jewish courts are obliged to judge descendants of Noah, or only *permitted* to do so, the question of the choice of law arises. This problem has two aspects: What substantive law will the court apply, and what rules of evidence will it abide by?²⁵⁶

²⁵⁶ The *Jerusalem Talmud*, *Kiddushin* 1:1 (ed. Vilna, p. 1b), discusses a closely related issue in the case of an individual judged by a non-Jewish court for an offense for which he should be punished in accordance with Jewish law: "It is to expound that gentiles who have sexual relations with those prohibited to gentiles be judged according to the laws of the nations; and gentiles who have sexual relations with those prohibited to Israelites, be judged according to Jewish law. Said R. Elazar, 'Among them you have only a betrothed Israelite woman [for whom a gentile is liable].'" The *Jerusalem Talmud* (ibid.) continues on to assert that the number of judges and witnesses as well as the kind of penalty, etc., depend upon the body of law under which judgment is to be given: "If you say they are tried under

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Israelite law, then they must be subject to the testimony of two witnesses, to the judgment of twenty-three judges, to appropriate forewarning, and, if guilty, to execution through stoning. If you say they are tried under gentile law, then they are subject to the testimony of only one witness, to the judgment of only one judge, to no admonition and, if guilty, to execution by decapitation by the sword" (translation adapted from Jacob Neusner, *The Talmud of the Land of Israel*, vol. XXVI [Chicago, 1984], p. 11). See also Maimonides *M.T., Melakhim* 9:7. From the comments of Rashi, Ramah, and Ran, however, it appears that according to the *Babylonian Talmud* (*Sanhedrin* 57b), although the penalty is the Jewish execution of stoning, "...with regard to the number of judges and witnesses, as well as forewarning, Noahide law applies, that is to say that he may be executed upon the testimony of one witness after a hearing by one judge." See *Hemdat Yisrael, Kuntres Ner Mitzvah*, p. 92a. According to these commentaries, Jewish substantive law will apply, but Jewish rules of evidence will not. Moreover, R. Me'ir Dan Plotzki (*Hemdat Yisrael*, *ibid.*, p. 92b) believes that although the *Jerusalem Talmud* is not certain regarding witnesses, judges, and forewarning, it appears that Jewish witnesses are not essential, that even non-Jewish witnesses will be heard, according to the view that non-Jewish witnesses are qualified by biblical law (*Hagahot Asheri, Gittin* 1:10; see note 109 above). On the contrary, according to the view that the inadmissibility of testimony which is not immune to prosecution for perjury (see text between footnotes 201 and 202 above) aims to ensure that witnesses will not lie, the testimony of a non-Jew against a non-Jew is actually better. Since, unlike Jews, non-Jews are liable for capital punishment for even *causing* death (as opposed to actual killing), the non-Jew will be afraid to lie, lest he ultimately be executed for causing the death of the original, terminally-organically ill defendant against whom he testified falsely. For a Jew, however, since there is no such fear, this is testimony that is immune to prosecution for perjury and hence not admissible. *Hagahot Asheri*, *loc. cit.*, argues against *Rosh*, where the latter rules that in the case of a non-Jew's ox that gores that of a Jew, Jewish witnesses are required: "I do not know why non-Jewish witnesses would not be qualified or why Jewish witnesses would be more qualified in a matter of descendants of Noah, since with regard to testimony concerning descendants of Noah, there is no prohibition of, 'You shall not bear false testimony against your

Non-Jewish Litigants in Jewish Courts

Maimonides distinguishes between two different situations: 1) where the litigants want to be tried according to Jewish law, 2) where one of them does not:²⁵⁷

If two non-Jews come before you wishing to be judged according to Jewish law, they are judged according to Jewish law.²⁵⁸ If one wishes to be judged according to Jewish law and the other does not, the one who does not may be compelled to be judged only according to their law.²⁵⁹

neighbor' (Ex. 20:13)." See also text to note 264 below and M. Breuer, "Din Benei Noah beVeit Din Shel Yisrael," *haMa'ayan* XXIV: 1 (1985), 33-45, particularly pp. 35, 43.

²⁵⁷ *M.T.*, *Melakhim* 10:12.

²⁵⁸ In the manuscript of the Royal Library of Stockholm, reference is to "Jewish judges." See article by D. Frimer, *op. cit.* (note 66 above), comment of B. Lifshitz, n. 62, p. 100.

²⁵⁹ Further on, Maimonides discusses the question of litigation between Jewish and non-Jewish litigants. Cf. Maimonides *M.T.*, *Nizkei Mamon* 8:5: "If the ox of a Jew gores the ox of a gentile, the Jew is exempt, because non-Jews do not require compensation for damage done by animals, and we judge them according to their own law. If the ox of a gentile gores that of a Jew, the gentile must pay full damages, whether the ox had gores for the first time [*tam*] or was known to be an ox that gores [*mu'ad*]. This fine is imposed upon the gentiles, because they are not heedful of the commandments and do not remove potential causes of damage, and if they are not required to pay the damages of their animals, they will fail to restrain them, causing financial loss to everyone." This regulation applies only to gentiles who have not adopted the seven Noahide commandments as explained in *Baba Kama* 38a. As to discrimination, it will be noted that Maimonides provides a rationale for his first ruling [that Jews are exempt] relying on the declaration of R. Abahu in the *Jerusalem Talmud* (*Baba Kama* 4:3) that non-Jews are to be judged according to "their laws." With regard to the second ruling, Maimonides explains that the reason is to prevent damage by animals of non-Jews; hence, here too, there is not discrimination, but rather distinction. See fur-

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It appears that Maimonides is here referring to the body of law by which the case will be decided, if they wish, Jewish law; if not – their own.²⁶⁰

What, however, will be recognized as evidence? Hazon Ish²⁶¹ discusses various aspects of this question, concluding that in a Jewish court, witnesses must also be Jewish:²⁶²

A descendant of Noah judges his fellow man according to the testimony of another descendant of Noah (who observes the seven commandments). But it appears that a Jew does not judge a descendant of Noah according to the testimony of a descendant of Noah, since for us, this is not testimony. We are commanded to preserve the life of the resident alien [who is a descendant of

ther, *Even haEzel*, ad loc.; *M.T.*, loc. cit.; *Nahal Yitzhak* 91:1-2; *Torah Temimah*, Ex. 21, nt. 277; *Divrei Avraham* (Shadmi) III:5; R. Re'uven Margaliyot, *Tal Tehiyah*, op. cit. (note 8 above), p. 74; Maharal, *Be'er Golah*, *Be'er* 7, (ed. Jerusalem, 1971), p. 145; *Mei Marom* I, p. 133; *Torah Shelemah*, op. cit. (note 23 above), p. 221. See also D. Frimer, op. cit. (note 66 above). The subject is a lengthy one and will not be discussed further in the present study. See also *Mishnat R. Eliezer* (of R. Eliezer Toledo [1770-1848], who served as rabbi in Constantinople) *Hoshen Mishpat* 129, p. 178ff., where the question, what is the Jewish law according to which the Jewish and non-Jewish parties to a litigation are tried, is discussed. Two possibilities are considered: law that applies to Jews and law that applies to Jewish litigation with Noahides (which is not identical to the laws Noahides apply to themselves). The ensuing discussion there considers the question unresolved by *Benei David*, *Hilkhot Mekhirah* 22, ad fin.: does the ruling, "this is your law" mentioned with regard to litigation between Jew and non-Jew, refer to laws that the non-Jews have established for themselves or to Noahide Law proper?

²⁶⁰ The term, "their law," however, still requires clarification. Does it refer to biblically prescribed Noahide law or to their "religious" law? See text to note 138 above.

²⁶¹ On Hazon Ish, see above, note 94.

²⁶² *Hazon Ish*, *Baba Kama* 10:16.

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Noah], and so we may execute him only on the basis of proper evidence.

Although discussion here is of capital cases, Hazon Ish suggests that in civil cases as well, the requirements of Jewish rules of evidence must be met.

May a Jewish court try a non-Jew in a matter of civil law on the testimony of a resident alien? This may not be an instance of the principle, “If²⁶³ you can rule in his favor according to their law, rule in his favor and tell him, ‘this is your law.’” For testimony is another matter, and must meet Jewish criteria. This explains the ruling of Rosh²⁶⁴ that damages may be recovered from a non-Jew only on the basis of proper testimony.²⁶⁵

Hazon Ish goes on to consider whether, in view of the regulation that Noahide courts may rule on the basis of one witness, a Jewish court may do the same when judging a Noahide.

The matter of one witness and one judge, mentioned in *Sanhedrin* 57b and in Maimonides, *Hilkhos Melakhim*, chapter 9, requires consideration. Does this regulation pertain only when one descendant of Noah judges another, or perhaps even when a Jew is the judge. For the insufficiency of one witness is a divine decree not given

²⁶³ *Baba Kama* 113a.

²⁶⁴ *Piskei haRosh*, *Baba Kama* 1:19; also cited in *Tur Hoshen Mishpat* 408.

²⁶⁵ See also the comments of R. Me’ir Simhah of Dvinsk, text to note 120 above. See also *Hiddushim uMekorim*, *Hilkhos Melakhim* 9:14 (by the author of *Minhat Hinnukh*) where it is asked whether in the case of descendants of Noah one witness is sufficient for a “lenient” ruling, “e.g., to testify to the death of a woman’s husband and thus free her to marry another. Or is one witness sufficient only for issuing a strict ruling [e.g., prosecution for murder]?”

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to Noahides. They accept the testimony of their fellows, who according to Jewish law may not be witnesses at all. Again, in Noahide law, one witness is equivalent to the two witnesses required by Jewish law. We, however, are not permitted to execute a descendant of Noah who keeps the seven commandments without evidence from *proper* witnesses. Thus, one witness is not sufficient. And *Sefer haHinnukh*, commandment 192, wrote that two witnesses are necessary. It may, however, be that he did not mean precisely two witnesses, but meant only to establish that a Jewish court may not judge a descendant of Noah without witnesses.

Hazon Ish's final words relate to a very strange passage in *Sefer haHinnukh*:²⁶⁶

This is the principle to keep in mind: Whenever non-Jews are under our jurisdiction, we are obliged to try them for violations of that which they were commanded. And I have already written regarding Exodus 18-20 [*Yitro*], that their penalty is always death, whether the violation was intentional or not, and that they do not require forewarning, but two witnesses or their own confession are necessary, for even those who are not qualified to testify against a Jew are qualified to testify against one another. And an elder [halakhic authority] has so ruled.

A number of the Later Authorities²⁶⁷ have discussed the passage, "but two witnesses... are necessary," and some have even emended the text as did the author of *Minhat Hinnukh*²⁶⁸ who wrote:

It is impossible to reconcile these words without posit-

²⁶⁶ *Sefer haHinnukh* 192.

²⁶⁷ For example, *Sha'ar Mishpat*, *Hoshen Mishpat* 408.

²⁶⁸ *Minhat Hinnukh*, ad loc., 5.

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ing an error in copying, for this is an explicit passage in the *Talmud* in *Sanhedrin*, and Maimonides also rules in *Hilkhot Melakhim* that a descendant of Noah may be executed upon the testimony of one witness.²⁶⁹

Thus, at the end of the passage quoted above, Hazon Ish suggests a solution – that *Sefer haHinnukh* is referring to the case of a descendant of Noah being tried before a Jewish court.

The author of the *Helkat Yo'av*²⁷⁰ also accepts the view that when descendants of Noah are to be tried in a Jewish court according to Jewish law, two witnesses are needed for a ruling in both civil and capital cases. Thus he explains the opinion of Rosh, that damages can be recovered from a non-Jew only upon the testimony of two witnesses.²⁷¹ The rule that a Noahide may be executed on the testimony of one witness, applies, he holds, only to those being tried by Noahide courts.²⁷² A Jewish court will always be bound by

²⁶⁹ Cf. also *Targum Onkelos*, loc. cit. (Appendix I), who seems to require more than one judge and more than one witness; and the comments of Netziv of Volozhin (Appendix I). See also Rav Saadiah Gaon, *Emunot veDe'ot* 3:9, regarding the punishment of Cain, "For God commanded that a murderer be executed only with a judge and witnesses, and since these were not to be found when Cain killed Abel, he did not incur the death penalty.... See Gen. 9:6, 'Whoever sheds man's blood, by man shall his blood be shed....'"

²⁷⁰ *Helkat Yo'av (mahadurah tinyana)* 14 (on the author of *Helkat Yo'av*, see note 182 above). On this subject, see also *Avnei Millu'im, teshuvah* 24.

²⁷¹ See text to note 264 above.

²⁷² *Helkat Yo'av*, loc. cit. (note 270 above), also discusses how it is possible to execute a descendant of Noah upon the testimony of one witness when the witness himself is presumed not to be truthful according to Ps. 144: 7-8, 11: "...Rescue me ...out of the hand of strangers; whose mouth speaks falsehood..."? He answers that the verse refers only to strangers and not to resident aliens. That a descendant of

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the requirement of two witnesses as well as that of twenty-three justices in capital cases.

Noah may be executed on the testimony of another who is not a resident alien, is also understood, since the average Noahide, who is presumed to keep the seven commandments is not presumed to be untruthful. The word *stranger* mentioned in the verse refers to one whose ways have become strange (i.e., disregards the commandments). The reason a descendant of Noah is disqualified from giving testimony concerning the death of a woman's husband is that the Sages made no distinction in their enactment between Noahides who keep the commandments and idolators. Moreover, *Helkat Yo'av* holds that a descendant of Noah may not be executed on the testimony of another Noahide who worships idols or is known to be evil. One known to be evil is presumed to lie as well. The same applies to one who has some interest in the matter on which he is testifying. See also M. Breuer, op. cit. (note 256 above).

Chapter Nine

CONCLUSION

The present study has discussed one of the fundamental issues of human society. It has attempted to review and clarify a number of questions concerning the Jewish attitude towards the obligation of maintaining a legal system.

We have seen that this obligation is incumbent upon all men and in our sources, dates back as far as Abraham, who was expected to command his children to do righteousness and justice, and Adam, who was prohibited from eating of the tree of knowledge.

Law is the concern of all humanity.... "Pray for the welfare of the state" (*Avot* 3:2), for it is the state that establishes law in the land: "The king by justice establishes the land" (*Proverbs* 29:2). And all of this is equally true of non-Jewish governments, for the descendants of Noah were also commanded concerning *dinim*.²⁷³

²⁷³ Rav Kook in his introduction to the tractate *Sanhedrin* (1934), as recorded by R. Moshe Tzvi Neriah, *Tehumin*, VII (1986), 275.

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The Noahide commandment of *dinim* establishes a point of commonality between the Jewish people and other nations on the most fundamental level of social existence (regarding the extent of this commonality and points of divergence, a number of views were presented).

A number of questions arise with regard to possible conflicts over jurisdiction (of non-Jewish courts over Jews and Jewish courts over non-Jews) and the body of law used to adjudicate such cases.

Within the context of our discussion, the source of any given regulation was seen to be crucial. Statutes based upon reason are incumbent upon the descendants of Noah. Those rooted exclusively in Scripture or the normative methods of biblical exegesis are not.

It appears, however, that the most important aspect of the commandment of *dinim* is, as emerges from the various sources, the very obligation of establishing the rule of law, of justice, of rationality, and of natural equity.

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APPENDIXES

Appendix I

TESTIMONY OF ONE WITNESS*

R. Naftali Tzvi Berlin²⁷⁴ holds a similar view in his *Ha'amek Davar* (Gen. 9:6). In relation to Onkelos' translation of the verse (Gen. 9:6), "He who sheds man's blood by man shall his blood be shed...", as "He who sheds blood before witnesses, his blood shall be shed at the word of the judges," *Netziv* comments that the principle established in *Sanhedrin*, that in Noahide cases one witness is sufficient for imposition of the death penalty, applies "only when the witness is known to be reputable (*muhzak bekashrut*). It is true that what is sufficient in Noahide law is not sufficient in Jewish law, but not everyone is believed as one witness before one judge to determine the verdict."

* Appendix to note 215.

²⁷⁴ *Netziv* of Volozhin; on *Netziv*, see note 155 above.

Appendix I

*Helkat Yo'av*²⁷⁵ considers Onkelos' translation of Genesis 9:6 problematic.

It should be noted that although the verse is concerned with descendants of Noah, it is also cited in connection with Jews. See *Sanhedrin*²⁷⁶ with regard to forewarning a pursuer of the forbidden nature of his crime and its penalty: "The Bible said, 'He who sheds man's blood by man shall his blood be shed....' Save this man's [the potential victim's] blood with the blood of the other [the pursuer]." R. Yosef Engel²⁷⁷ concludes from this, "You must admit that this law remains in force for us from that which was said to the descendants of Noah."²⁷⁸

*Hazon Ish*²⁷⁹ asks whether in the case of a potential victim who is a resident alien (*ger toshav*) or a descendant of Noah who observes all seven commandments, it is permissible to kill his pursuer even if the latter is himself a resident alien or a Noahide. "And from that which is said below [*Sanhedrin*,²⁸⁰ that in forewarning we quote the verse: 'He who sheds man's blood by man shall his blood be shed...'] it appears that this was addressed to descendants of Noah. With regard to Jews, however, the principle is inferred from Exodus 22:1. Were this not the case, we would conclude that Genesis 9:6 was addressed to Jews and not to the descendants of Noah, in accord with the principle that whatever was not repeated at Sinai is not binding upon

²⁷⁵ *Helkat Yo'av*, *mahadurah tinyana*, 14.

²⁷⁶ *Sanhedrin* 72b.

²⁷⁷ Concerning R. Engel, see note 58 above.

²⁷⁸ *Beit haOtzar I*, *ma'arekhet alef-bet, ot zayin*, p. 5a; see also text to note 59 above.

²⁷⁹ *Hazon Ish*, *Baba Kama* 10:15, p. 83a.

²⁸⁰ *Sanhedrin* 72b.

Testimony of One Witness

the descendants of Noah.²⁸¹ And the reason the forewarning of the pursuer makes use of Genesis 9:6 is that it is more familiar.”²⁸² See also the question, raised by R. Yishayahu Pick;²⁸³ “Since Genesis is the source from which feticide is inferred to be a capital crime for the descendants of Noah, how is it known that a Jew is not executed for feticide? If because this regulation was not repeated at Sinai, then, on the contrary, it would have to be concluded that it was addressed only to Jews.”²⁸⁴

On the rule of not passing judgment based on the testimony of a single witness, see *Sefer haHinnukh*.²⁸⁵

Since the nature of man is evil and he may at times harbor resentment in his heart towards another, even a perfectly decent individual may at times not be spared from sin, and although an individual may stand in the ways of honesty for many years, it is not impossible that he may suddenly change and become evil..., but since two decent men must testify, it is presumed of all the descendants of Israel that no two would agree to testify falsely, and presumption [*praesumptio juris*] is of great force in all matters.

²⁸¹ See text to note 47 above.

²⁸² On whether the law of the pursuer applies to descendants of Noah, see *Sedei Hemed*, *ma'arekhet gimel*, 55:44, in the name of *Sefer Ben Yehudah* 21, where it is asserted that since the law of the pursuer is inferred by means of one of the hermeneutical principles, it is understood that it could not be derived on the basis of reason (*sevara*) alone. Accordingly, the law does not apply to the descendants of Noah, since there is no such hermeneutical derivation with regard to them. See also *Pe'at haSadeh*, *ma'arekhet gimel*, 6:13.

²⁸³ Cited in *Noda biYehudah*, *mahadurah tinyana*, *Hoshen Mishpat* 59.

²⁸⁴ See *Noda biYehudah*, *ad loc.*; Maharatz Hayyot, *Torat haNevi'im* 11, op. cit. (note 1 above), pp. 63ff.

²⁸⁵ *Sefer haHinnukh*, 523 (ed. Chavel, 526).

Appendix I

See also Maimonides:²⁸⁶ “We were commanded to rule on the basis of the testimony of two witnesses, even though we do not know if they are testifying to the truth or testifying falsely.”²⁸⁷

²⁸⁶ Cf. Maimonides, *M.T.*, *Yesodei haTorah* 8:2.

²⁸⁷ Cf. *Sefer haHinnukh*, cited in text to note 266 above, who holds that two witnesses are required for descendants of Noah.

Appendix II

EXEMPTION FROM OBLIGATION TO JUDGE*

In *Hiddushei haRan*²⁸⁸ we find, “But since Shekhem son of Hamor was their ruler, they could not try him, as we find in the case of a number of kings of Israel who did evil in the sight of the Lord and yet were not punished by their subjects.” See also *Maharal*,²⁸⁹ who asks about Maimonides’ approach: “How could they judge the son of the ruler of their land, for they [the people] feared them [the ruler and his son]. *Dinim* is prescribed when it is possible to sit in judgment. God exempts, however, in cases of *force majeure*....” Compare *Or haHayyim*,²⁹⁰ “And it is difficult [to understand] who told Maimonides that they [descendants of Noah] are obliged to judge one who is stronger

* Appendix to note 251.

²⁸⁸ *Hiddushei haRan*, *Sanhedrin* 56b, s.v. *vaYetzav*.

²⁸⁹ *Gur Aryeh*, Gen. 34:13.

²⁹⁰ *Or haHayyim*, Gen. 34:25.

Appendix II

than themselves, such as a king, etc. Even in Jewish law there exists an exemption in such cases – he is neither judged nor is testimony heard against him.”

*Shevut Ya'akov*²⁹¹ discusses what the law is “when there is a suspicion that one of the litigants is extremely violent, when one fears for life or even monetary damage” (the author distinguishes there between cases of danger to life and danger of monetary damage). *Zekan Aharon*²⁹² discusses the possibility that the commandment, “You shall not be afraid of the face of any man,” applies even when life is endangered.²⁹³ R. Me’ir Dan Plotzki²⁹⁴ discusses whether a descendant of Noah is obliged to endanger himself in order to fulfill the commandment of *dinim*. For even if descendants of Noah are exempted by *forces majeures*,²⁹⁵ this is only with regard to negative commandments. In the case of positive commandments, however (where failure to act as a result of *forces majeures*, is not considered as though the individual had in fact acted), a Noahide may be obliged to sacrifice his life, since the principle “*vahai bahem*” does not apply.²⁹⁶ R. Plotzki goes on to adduce the

²⁹¹ *Resp. Shevut Ya'akov* I:143.

²⁹² *Resp. Zekan Aharon* (Valkin) II:126.

²⁹³ Cf. A. S. Avraham, “Piku'ah Nefesh uMitzvot sheBein Adam leHavero,” *haMa'ayan*, XX:2 (1980), 49-54; J. David Bleich, “Current Responsa,” *JLA* VI (1987), 177-183; and Nahum Rakover, *Shilton haHok*. Section 4, “Alim baHalikh haShipputi,” ch. 3:A, “Lo Taguru Mipenei Ish,” pp. 112-113.

²⁹⁴ *Hemdat Yisrael, Kuntres Ner Mitzvah*, pp. 102a-b.

²⁹⁵ As Maimonides rules in *M.T., Melakhim* 10:2.

²⁹⁶ “*Vahai bahem*,” he shall live by them. From Leviticus 18:5, “You shall, therefore, keep My statutes, and My ordinances, which man shall live by; I am the Lord,” the *Talmud* (*Yoma* 85h) infers “live by them and not die by them.” That is to say that with but a handful of exceptions, preservation of life takes precedence over observ-

Exemption From Obligation To Judge

novel argument that prior to the giving of biblical legislation, Noahides were indeed obliged to sacrifice their lives rather than violate one of their commandments, but since then, this is no longer the case. "He shall live by them," which is known only from Scripture, applies also to descendants of Noah, who when they study Jewish law, i.e., their own seven commandments, are considered comparable to the High Priest.²⁹⁷ This being the case, they too are included in the principle of "live by them and not die by them."²⁹⁸

The completion of R. Me'ir Dan Plotzki's reasoning may be found in his commentary on the Pentateuch,²⁹⁹ where he disputes the opinion of *Minhat Hinnukh*,³⁰⁰ and, after explaining the nature of the commandment, "...you shall not be afraid of the face of any man...", concludes that this obligation, which devolves upon judges, does not apply to Noahides:

The commandment, "...you shall not be afraid of the face of any man...", requires further study. It is expounded in the *Sifrei*: "Even if he kills his [the judge's] son or sets his crop afire." Accordingly, once he has heard the [litigants'] claims, the judge may not withdraw from the case. And why not? Regarding the return of lost property, we learn that one is exempt if it entails

ance of the commandments.

²⁹⁷ See *Sanhedrin* 59a.

²⁹⁸ Concerning the question of whether the principle of "he shall live by them and not die by them," applies to descendants of Noah, see also *Resp. Hatam Sofer, Yoreh De'ah* 70. R. Moshe Tzvi Neriah, "Mishpatav leYisrael," *Tehumin*, II [1981], p. 221ff., explores the question from halakhic and philosophical points of view.

²⁹⁹ *Keli Hemdah, Parashat Devarim*, p. 7a.

³⁰⁰ *Minhat Hinnukh* 416.

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financial loss, and even with regard to saving the life of one's fellow man, one is not obligated if financial loss is incurred. As Rosh asks, "why should the commandment of *dinim* be any different?" Scripture itself apparently clarifies this issue [Deut. 1:17], "for judgment is the Lord's." In other words, the issue here is not one of "between man and man," but the requirement is, rather, to establish *judgment* – which is the Lord's. Accordingly, if a judge fears a litigant who is violent and therefore compensates the wronged party himself, it appears that the judge has, nevertheless, violated this commandment. For it is not concerned with the possible loss to one of the litigants. If this were the case, the judge's right to protect his own property would take precedence. The issue here is that God wished to establish His law, that the law of the Torah rule the Jewish people. Thus, by compensating one of the litigants, the judge has not accomplished the intent of the commandment, "...you shall not be afraid of the face of any man...." Clearly, all this applies only to Jews for whom "judgment is the Lord's." But in the case of Noahides, the obligation of *dinim*, is obviously only for the proper functioning of society. Theirs is not the biblical law, as is written, "He declares His word to Jacob, His statutes and His ordinances unto Israel. He has not dealt so with any nation; and as for His ordinances, they have not known them."³⁰¹ Thus, it is clear that the commandment of "...you shall not be afraid of the face of any man..." as interpreted by the Sages, "even if he kills his son or

³⁰¹ Cf. R. Plotzki's remarks quoted in text to note 112 above; see also the opinion of Ran, text to note 35 above.

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sets his crop afire," is not relevant to descendants of Noah."

Compare *Yeshu'at David*:³⁰² "This prohibition ['...you shall not be afraid of the face of any man...'] is, like all other negative commandments: for the sake of heaven, not for the sake of man. [It is] not like the commandment (Lev. 19:15), '...but in righteousness shall you judge your neighbor,' which is for the benefit of your neighbor. Therefore, as long as there is no danger to life, one is obliged to judge." R. Sha'ul Yisraeli³⁰³ distinguishes between death as a *force majeure* and all other types of *force majeure*, and between the individual's obligation and the obligation of society to try cases.

In answer to the question whether the inhabitants of Shekhem had really incurred the death penalty for not having judged their ruler, *Maharal* explains the situation as comparable to war, in which those who have committed no evil are sometimes killed: "Since there were members of that nation [Shekhem] who had perpetrated evil against them [the sons of Jacob], it was permitted [for the latter] to make war, and all wars are thus." See also *Ha'amek Davar*:³⁰⁴ "'Even at the hand of every man's brother, [will I require the life of man].' God, here, explains that man will be punished when it is proper to act in *brotherhood*, which is not the case in the context of war. It is then the time to kill and no penalty is attached. For such is the way of the world."³⁰⁵

³⁰² Cf. *Yeshu'at David* [Povarsky] (Benei Berak, 1968) 23.

³⁰³ "Pe'ulot Tzeva'iyot leHaganat haMedinah," in *Amud haYemini* (Tel Aviv, 1966), p. 174.

³⁰⁴ *Ha'amek Davar*, Gen. 9:5.

³⁰⁵ For the situation of peacetime, however, see *Resp. Rivash haHadashot* 9, cited in Nahum Rakover, *Shilton haHok*, Section 2, "Al Shilton haHok," p. 73, text to note 70.

Appendix III

U.S. CONGRESS ON
NOAHIDE LAWS*

To designate March 26, 1991, as 'Education Day, U.S.A.'. (Enrolled Bill [Sent to President])

H.J.Res. 104

*One Hundred Second Congress
of the United States of America*

AT THE FIRST SESSION

Begun and held at the City of Washington on Thursday, the third day of January, one thousand nine hundred and ninety-one

* From the Congressional Record, 102nd Congress, First Session, Jan. 3, 1991.

Appendix III

Joint Resolution

To designate March 26, 1991, as 'Education Day, U.S.A.'.

Whereas Congress recognizes the historical tradition of ethical values and principles which are the basis of civilized society and upon which our great Nation was founded;

Whereas these ethical values and principles have been the bedrock of society from the dawn of civilization, when they were known as the Seven Noahide Laws;

Whereas without these ethical values and principles the edifice of civilization stands in serious peril of returning to chaos;

Whereas society is profoundly concerned with the recent weakening of these principles that has resulted in crises that beleaguer and threaten the fabric of civilized society;

Whereas the justified preoccupation with these crises must not let the citizens of this Nation lose sight of their responsibility to transmit these historical ethical values from our distinguished past to the generations of the future;

Whereas the Lubavitch movement has fostered and promoted these ethical values and principles throughout the world;

Whereas Rabbi Menachem Mendel Schneerson, leader of the Lubavitch movement, is universally respected and revered and his eighty-ninth birthday falls on March 26, 1991;

U.S. Congress on Noahide Laws

Whereas in tribute to this great spiritual leader, 'the rebbe', this, his ninetieth year will be seen as one of 'education and giving', the year in which we turn to education and charity to return the world to the moral and ethical values contained in the Seven Noahide Laws; and

Whereas this will be reflected in an international scroll of honor signed by the President of the United States and other heads of state: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,
That March 26, 1991, the start of the ninetieth year of Rabbi Menachem Schneerson, leader of the worldwide Lubavitch movement, is designated as 'Education Day, U.S.A.'. The President is requested to issue a proclamation calling upon the people of the United States to observe such day with appropriate ceremonies and activities.

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.

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